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AMERICAN CITY GOVERNMENT  
*Its Machinery and Processes*





# AMERICAN CITY GOVERNMENT

*Its Machinery and Processes*

By

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STACKPOLE & HECK, INC.  
NEW YORK, N. Y.    1949    HARRISBURG, PA

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## PREFACE

THIS TEXTBOOK is confined to such materials as the author believes may be covered advantageously in a one-term course devoted to consideration of the machinery and processes of city government. In general, the greatest emphasis is placed on the major governmental problems of cities which are necessarily discussed briefly in texts pertaining to the broad subject of government at all levels in the United States. These problems are given thorough consideration. Controversial aspects are stressed.

Omission of a chapter on municipal courts is due to the author's opinion that this topic should be covered either in the study of state government or in a discussion of the problem of law enforcement as a phase of municipal administration. The exclusion of some topics, for instance, urban representation in state legislatures, and the comparatively brief treatment of others, such as the registration of voters, is attributable to the fact that these subjects are adequately discussed in other courses which the student of city government is likely to have had.

The author wishes to acknowledge his indebtedness to the numerous scholars who have explored the field of city government in its general and special aspects. Without benefit of their contributions, the task of preparing this text would have been extremely difficult.

ERNST B. SCHULZ

*Passer, Pa.*



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# CHAPTER I

## THE CITY AS A SOCIAL PHENOMENON

### *Outline*

- The Origin and Growth of Cities
  - Conditions Essential to the Existence of Cities
  - The Origin, Location, and Growth of Cities
  - Urbanism
  - The Growth of Cities in the United States
- The Nature of A City
  - Physical and Social Aspects
  - Functional Differentiation in Land Use
  - Social Solidarity of the Urban Community and Its Dependence on the Outside World
  - Complexity of Urban Social Relations
  - Heterogeneity of the City Population
  - Urban Ways of Life
  - Other Characteristics of City Populations
- Governmental Consequences of the Social and Physical Characteristics of Cities

THE PRIMARY PURPOSE of this text is to consider those special aspects of the general problem of governing American cities which pertain to the *machinery* and *processes*, rather than to the functions, of municipal government. Typical subjects of discussion are: the city as a municipal corporation, the relations between cities and states, forms of city government, popular participation in urban governmental processes, and the governmental organization of metropolitan areas. However, an appreciation of the problems to be solved in devising adequate machinery and procedures requires knowledge and consideration of the city as a social phenomenon and familiarity with the functions of municipal authorities.

Problems of political organization and procedure are intimately related to social conditions and to the ultimate objectives of organized action. It therefore seems desirable to devote the first two chapters of this text to a survey of the city as a social entity and to a brief description of the services which city governments normally render to the urban public.

### THE ORIGIN AND GROWTH OF CITIES

**Conditions Essential to the Existence of Cities.** The origin and growth of cities are evidence of the cultural achievements of mankind. City life is possible only under certain conditions which are largely attributable to man's ability to rise above the level of an extremely primitive existence.



The most essential of these conditions is an agricultural productivity which is sufficiently great to provide food for persons who are engaged in non-agricultural pursuits. People cannot congregate in cities unless they enjoy agricultural independence, i.e., freedom from the necessity of raising the crops and the animals which are required for the sustenance of life. This independence depends on the ability of tillers of the soil to provide a food supply ample enough to satisfy the wants of city dwellers as well as their own. Achievement of a rate of agricultural production which is adequate to support numerous cities of considerable size requires fertile lands, a favorable climate, and scientific agricultural methods. Every development in farming which reduces the ratio of manpower to output contributes ultimately to the growth of cities. The phenomenal increase in the number and population of cities during modern times is associated with the revolutionary changes in the modes of agricultural production which have occurred since the beginning of the eighteenth century.

Other conditions which make life in cities possible are the solution of engineering problems, advancements in medical and sanitary science, and the development of means of livelihood other than hunting, grazing, and farming. Large numbers of individuals would be unable to live together in a limited space were it not for man's ingenuity in developing effective means of transportation and communication, in constructing large buildings, in providing adequate water supplies, and in solving sewage and refuse problems. Nor would huge city populations be able to survive for any great length of time if men had proved unequal to the task of coping with the menaces to health arising from life in congested areas. Obviously, too, cities owe their existence to cultural innovations which have multiplied the wants of men to an extent great enough to create an imperative demand for occupational activities of the type in which city residents are engaged. An equally important condition essential to city life is the development of a social organization sufficiently effective to enable large numbers of persons to live harmoniously in close contact with one another.

**The Origin, Location, and Growth of Cities.** The primary causes of the origin and growth of cities are economic in character. Among the major activities of man which give rise to cities and account for their increase in size are manufacturing, commerce and transportation. Agricultural independence was mentioned above as a condition which is essential to the existence of cities. It also is a principal cause of their creation and growth, inasmuch as few people would be available for the formation of urban communities if it were necessary for practically all persons to engage in agricultural pursuits.

Most urban communities owe their origin and subsequent development to the requirements of commerce, transportation, and manufacturing. Sometimes, however, the birth of a city represents a response to such needs as defense against enemies, religious worship, and the establishment of a seat of government. In earlier periods of history defense and worship were more

important factors in the formation of cities than they now are. Many a city in the United States began its career as a stronghold against the Indians, and some, including Salt Lake City, Utah, and Bethlehem, Pennsylvania, were founded for religious reasons. Washington, D.C., affords an excellent example of a city which owes its origin to political considerations. As a rule, the economic factor is somehow involved in the creation of cities, either as a primary cause or as a contributing force. In any event the life expectancy of a city and its prospects for growth, whatever the initial reason for its establishment, usually depend on economic developments.

The location of cities is determined primarily by the same social forces which account for their origin. Of the two aspects of location, viz., the general geographic position of a city and its particular site,<sup>1</sup> the former normally is far more significant than the latter as a determinant of the city's destiny.

The general geographic position of urban communities ordinarily is ascribable to the needs of transportation, commerce, and industry. Changes in the mode of transportation, for instance, from railroad to boat, necessitate the unloading and reloading of cargoes and the transfer of passengers, with the result that communities of individuals develop to render the services necessarily involved and to exploit the opportunities for trade which inevitably arise. The same phenomenon occurs at the intersection or convergence of trade routes and at the various stopping places along routes of travel to enable passengers to rest, to effect the replenishment and replacement of the means of locomotion, to permit the delivery of commodities destined for distribution in surrounding areas, and to receive the products of these areas for shipment elsewhere. Large cities like New York, Chicago, St. Louis, New Orleans, and Philadelphia are typical examples of great centers of commerce and transportation for extensive areas.

Many cities owe their general location to the requirements for manufacturing. Accessibility to sources of power and to raw materials and supplies is an important consideration. So are adequate transportation and communication facilities, proximity to markets, and the availability of capital and labor.

Other factors which are instrumental in fixing the general location of some cities are political requirements, health and recreational needs, and educational facilities and opportunities. Accessibility and central location are desirable for seats of government, and these features have played a part in the establishment of a number of political capitals. Washington, D.C., is a case in point, but the territorial expansion of the United States has deprived it of its former central position. The location of cities serving as health or recreational centers is determined in large measure by such matters as climate, topography, proximity to bodies of water, and accessibility. Cities which are centers of learning are likely to be located near adequate transportation facilities, in rather well-populated areas, and within convenient distance of sources of information.

The location of few cities is determined by any single factor. As a rule,

<sup>1</sup> The particular site of a city usually is fixed by considerations which are important chiefly with respect to the immediate interests of first settlers. To some extent, the same forces which determine general location account for the selection of a specific site.

a combination of circumstances accounts for the origin and survival of a city in a given locality and determines whether it is destined to grow rapidly or slowly, to remain stationary in population or to diminish in size. The original causes of a certain location are less important than the eventual effect of that location on the city's future. This effect is largely attributable to the prevailing interests of the region within which the city is situated and to the character of subsequent social and economic developments.

A fundamental change in the dominant interests of a region, a new invention, or a shifting of trade routes may spell the doom of some cities and insure a phenomenal growth for others. Railroad transportation ruined the careers of canal towns at the same time that it fathered new cities and promoted the prosperity of these and other communities for a long period. The effects of the development of large-scale air transportation on the future of particular cities remain to be seen, but it seems certain that some, by reason of their location in relation to air routes, will expand more rapidly than others. The relationship between location and dominant regional interests, especially economic, is so vital to cities that predictions as to the future growth of a particular city are extremely hazardous during periods when the rate of social change is rapid.

**Urbanism.** The social phenomenon which is known as urbanism is characterized by the dominance of cities over the political, social, and economic life of a country. This situation develops when a substantial proportion of the population is concentrated in numerous fairly large urban communities which are grouped rather closely together, and when manufacturing, commerce and transportation overshadow agricultural pursuits in economic significance. Urbanization is an attribute of highly industrialized and commercialized economies. Great Britain and the United States are countries which have undergone urbanization to a marked degree.

In many parts of the world, large urban communities are few in number and even small ones are widely scattered and none too plentiful. This state of affairs is characteristic of an agricultural society in which the rôle of industry and commerce is relatively unimportant. In a society of this nature cities are too limited in number and size to exert a dominant influence over the country of which they are a part.

The quality of city government in an urbanized society is a matter of nation-wide concern. Low standards of administrative performance and political corruption necessarily have far-reaching deleterious effects. Unless the affairs of cities are properly managed, the conduct of government at higher levels is likely to be adversely affected in many ways.

**The Growth of Cities in the United States.** In 1790, 5.1% of the inhabitants of the United States dwelt in places classified as urban on the basis of the definition of urban population employed by the Bureau of the Census in 1930 and 1940.<sup>2</sup> By 1800, the proportion was 6.1%; 100

<sup>2</sup> The percentages are taken from *Sixteenth Census of the United States: 1940, Population, Vol. 1, Number of Inhabitants, United States Summary, Table 6.* The 1930 and 1940

years later it had risen to 39.7%; in 1920 it was 51.2%; and by 1930 it had reached 56.2%. The ratio reported for 1940 is only slightly higher, viz., 56.5%. During the fifteen decades since 1790, the rate of increase of the urban population exceeded 50% in eight decades, ranged from 27.3% to 50% in six, and fell below 27.3% in only one. The maximum rate of increase, 92.1%, occurred in the ten years from 1840 to 1850 and the minimum, 7.9%, from 1930 to 1940. This marked decline in the rate of growth after 1930 is attributable for the most part to extremely unfavorable economic conditions, but there has been a decreasing rate since 1910 and the time is coming, possibly by 1975, when the urban population will increase only slightly, if at all.

The urban-rural population percentages by states and by regions are more significant than the figures for the United States as a whole. Some parts of the country have attained a high degree of urbanization, whereas others remain essentially agricultural in character. These sectional differences have important social and political consequences.

Although more than half of the people of the United States dwell in urban places, such is not the case with the populations of many of the states. In 1940, 28 states had less than 50% of their inhabitants living in urban areas. The percentage of urbanites was lowest in Mississippi (19.8), North Dakota (20.6), Arkansas (22.2), South Carolina (24.5), and South Dakota (24.6). Of the 20 states with an urban population in excess of 50% in 1940, the six most urbanized were Rhode Island (91.6), Massachusetts (89.4), New York (82.8), New Jersey (81.3), Illinois (73.6), and California (71).

Table I shows the urban-rural distribution by regions and their several divisions in 1940.

TABLE I

<i>Regions and Divisions</i>	<i>Percentage of Total Population</i>	
	Urban	Rural
The North .....	67	33
New England .....	76.1	23.9
Middle Atlantic .....	76.8	23.2
East North Central .....	65.5	34.5
West North Central .....	44.3	55.7
The South .....	36.7	63.3
South Atlantic .....	38.8	61.2
East South Central .....	29.4	70.6
West South Central .....	39.8	60.2
The West .....	58.5	41.5
Mountain .....	42.7	57.3
Pacific .....	65.3	34.7

As this table indicates, the most highly urbanized sections are those along

definition of urban areas includes: (1) cities and other incorporated places having 2,500 inhabitants or more; (2) towns in New Hampshire, Massachusetts, and Rhode Island containing a village or thickly settled area having more than 2,500 inhabitants and comprising, either by itself or in combination with other villages, more than 50% of the total town population, and (3) townships and other political subdivisions with a total population of 10,000 or more and a population density of at least 1,000 per square mile. In 1940, about 96% of the urban places fell in the first category, 102 towns in the second, and 33 towns, townships, or districts in the third.

the Atlantic and Pacific Coasts and in the vicinity of the Great Lakes. This fact is evidence of the importance of commerce and breaks in transportation facilities in the development of cities.

The emergence of urbanism in the United States is rather strikingly revealed by a comparison of the number and size of urban places at different periods of time. Beginning with 1790, the figures for 30-year intervals are presented in Table II.

TABLE II  
SIZE AND NUMBER OF URBAN PLACES: 1790 TO 1940

<i>Size of Places</i>	<i>Number of Places</i>					
	1940	1910	1880	1850	1820	1790
1,000,000 or more .....	5	3	1	..	..	..
500,000 to 1,000,000 .....	9	5	3	1	..	..
250,000 to 500,000 .....	23	11	4	..	..	..
100,000 to 250,000 .....	55	31	12	5	1	..
50,000 to 100,000 .....	107	59	15	4	2	..
25,000 to 50,000 .....	213	119	42	16	2	2
10,000 to 25,000 .....	665	369	146	36	8	3
5,000 to 10,000 .....	965	605	249	85	22	7
2,500 to 5,000 .....	1,422	1,060	467	39	26	12
Total of all sizes .....	3,464	2,262	939	236	61	24

In 1790 the largest city, New York, had a population of 49,401.<sup>3</sup> By 1940 there were 92 cities with a population of 100,000 or over and 199 with a population of 50,000 or more. In 1940 the percentage of the total population of the United States living in cities with a population of 1,000,000 or over was 12.1% as compared to 2.4% in 1880 which was the first census year in which a city was reported to be in this population class. During the period from 1840 to 1940, the percentage of the total population dwelling in urban places of 25,000 or over rose from 5.5% to 40.1%.

Another indication of urbanism in the United States is the development of metropolitan districts in which one or more large central cities, usually one, and a substantial number of smaller municipalities are so situated in relation to one another as to constitute a single highly urbanized area. The Bureau of the Census reported the existence of 140 metropolitan districts in 1940. Their combined population amounted to 47.9% of the total number of inhabitants of the United States.

Generally speaking, heavily populated urban areas grow more slowly at the center than at the periphery and in time the central core may lose population. Such a loss occurred from 1930 to 1940 for the central city or cities of 34 of the 140 metropolitan districts listed by the Bureau of the Census.

In two districts the central cities gained and the outside areas lost, and in two others both the central cities and the outer sections experienced a population loss. Of the remaining districts, 90 showed increases for both the

<sup>3</sup> The figure is for New York and its boroughs as constituted under the act of consolidation of 1898. For New York City alone, the population in 1790 was 33,131.

central and outside areas, with the latter usually growing at a much more rapid rate than the former; five increased at the center and outside, but the central cities grew more rapidly than the outer sections; and seven were new districts for which no figures were available for 1930. The outward movement of people from heavily populated centers and the more rapid rates of growth in the outer areas than in the central cities of metropolitan areas are the results of over-congestion and an increase in the speed and range of transportation and communication facilities due to the development of electric power and the automobile.

There has been an amazingly rapid increase in the urban population of the United States as a whole, in the number of cities of various sizes, and in the populations of most cities. Although some municipalities have grown very slowly and some have suffered losses in population, the general over-all result has been one of urban expansion at a very substantial rate. The primary cause of this phenomenon was the transformation of the United States from an agricultural to a highly industrial and commercial society. For the country as a whole, immigration and the excess of births over deaths were the cause of great growth in population, whereas for cities, migration from the rural sections was the principal factor. Immigration from abroad also contributed substantially to the expansion of American cities, but natural increase was relatively insignificant as a direct factor of growth in the case of cities. Urban birth rates are now so low that large cities and many small ones will be unable to maintain their populations at present levels unless migration from country to city continues.<sup>4</sup>

The days of an extremely rapid growth of cities in general appear to be over in the United States. Nevertheless, the proportion of city to rural inhabitants probably will continue to rise slowly for some time, perhaps for another generation, until a balance is achieved through operation of the economic forces which are the primary causes of urbanization. Whether the ratio will increase eventually to about 80%, as in England, or become stabilized at a lower point, e.g., 70%, is a question to which a definite answer cannot be given. The making of population estimates always involves certain assumptions and, since unforeseen circumstances may develop, predictions about future population conditions are very likely to prove erroneous in many respects.

#### THE NATURE OF A CITY

The following discussion of the nature of the city as a social phenomenon pertains to the cities of the United States as they have developed up to the present time. Modern cities in this country are a product of the industrial revolution and their character is largely a consequence of the fact that steam power and steam transportation played so vital a part in the course of their growth. If electricity and internal-combustion engines, rather than steam, had been available for industrial and transportation purposes at an earlier period,

<sup>4</sup>For a brief discussion of urban reproduction rates see E. T. Peterson, ed., *Cities Are Abnormal* (Norman, University of Oklahoma Press, 1946), pp. 65-75.

the development of cities might have followed a different course. The cities of tomorrow may differ materially from those of today. Electric power permits a dispersion of industry, and the beginnings of a trend toward decentralization already are noticeable. The airplane, television, the radio and, eventually, the use of atomic energy are likely to bring about a major transformation in the character of urban communities. However, for the time being and for the immediate future, cities probably will remain essentially the same in character as they now are. Decentralization may be desirable for economic, social, health, and military reasons, but the breaking up of large cities is not likely to occur for some time to come.<sup>5</sup>

**Physical and Social Aspects.** Superficially, a city is an aggregate of individuals dwelling in an area distinguishable by blocks of closely-grouped buildings separated by a system of streets. This, at least, is the first impression of the cross-country traveler upon entering a city after passing through mile upon mile of rural territory in which comparatively few people are encountered and in which detached farm houses and barns, cultivated fields, and paved highways are the most conspicuous signs of human habitation. Extensive open spaces and sparse population mark the country; compact rows of various structures and a concentration of population characterize the city. This contrast between country and city can be recorded very effectively through aerial photography, but the camera fails to reveal some of the city's most distinctive attributes as a social entity.

Any observant person who has experienced urban life realizes that the city is a complex phenomenon which is inadequately defined solely in terms of people, buildings, and streets. The outstanding features of the city as a social entity are: functional differentiation in regard to land use; the high degree to which its residents are dependent upon one another and upon the outside world for satisfaction of their numerous wants; the intricacy of its network of social relations; the heterogeneity of its population; and the ways of life of its inhabitants, especially in the economic field.

Most of these social features lack definite physical manifestation, but examination of the aerial photograph of a city shows that the evidence of functional differentiation in the use of land is partly physical. Sectional differences in cities are apparent to the eye because the use to which land is devoted determines such matters as the type of buildings, their proximity to one another, and the character of the land surface, i.e., whether paved or covered with grass and trees. The physical appearance of the city is determined to some extent by the social functions of its inhabitants. Conversely, many of the social characteristics of the city are attributable to the fact that a large number of individuals live together in a relatively limited built-up area.

The social contrasts between city and country are becoming less marked as a consequence of technological inventions. In many respects, the ways of

<sup>5</sup> The advantages of decentralization and the forces which probably will produce a new type of urbanism are discussed in E. T. Peterson, ed., *op. cit.*, particularly Chapters 1, 3, 6, 11-14.

life of rural dwellers are undergoing a process of urbanization. Even so, the differences between urban and rural communities remain substantial with reference to both social and physical aspects. It should be noted, however, that nearly all of the outstanding features of the city as a social entity differ in degree rather than in kind from those of the rural community.

**Functional Differentiation in Land Use.** Sectional differences resulting from the various uses of land within an urban area exist in all cities, both large and small. The principal purposes to which city land other than the street area is devoted are business or commercial, industrial, residential, and recreational. From the standpoint of general location as well as land utilization, the three primary types of section are: (1) the downtown or central business area; (2) an encircling area which is largely residential in character, but which contains subordinate business centers and industrial sections; and (3) the urban fringe in which land is used for various purposes. There also are heavy industry districts and areas of transition. The latter may be located anywhere within the city. They usually develop between business centers and the encircling residential areas. Graphically, these sections may be shown in geographical relation to one another by a series of concentric circles with the downtown business section at the center, a surrounding area of transition, an encircling residential area immediately beyond and, finally, the urban fringe. Of course, this circular depiction of sectional differences within a city fails to correspond with actual shapes and locations of sections and over-simplifies the real situation, but in a rough way it conveys an adequate picture of the fundamental features of urban sectional development.<sup>6</sup> A more detailed description of the several types of section follows.

The downtown business district is the concentration point of the city's economic life. Thousands of people travel each day to work or to transact business in its numerous retail stores and office buildings. Normally, this central area also includes hotels, transportation terminals, places of amusement such as theaters which accommodate many persons in a restricted space, and various financial institutions which bear an intimate functional relation to the business section. Wholesale merchandising establishments, industries which find a central location advantageous in spite of high land values, and residential sections of several types usually are found within or attached to this central district. The centrally-located residential sections include the rooming-house district, the slums, segregated colonies of such ethnic groups as the Negro, the Oriental, or immigrants of a particular nationality; and, sometimes, a preferred residential area in the heart of the city occupied by the wealthy aristocracy. A process of change which involves an outward expansion of the central business district into adjacent residential neighborhoods accounts for the undesirable character of most of these cen-

<sup>6</sup>For a brief explanation of three generalizations of the internal structure of cities, viz., the concentric-zone theory, the sector theory, and the multiple nuclei theory, see C. D. Harris and E. L. Ullman, "The Nature of Cities", *Annals of the American Academy of Political and Social Science*, Vol. 242, November, 1945, pp. 7-17.



trally-located residential sections. The mixture of business and residential uses gradually produces an area of deterioration in both the physical and social sense.

Surrounding the downtown business center and the area of transition ordinarily adjacent thereto is an extensive zone with ill-defined inner and outer boundaries which is utilized predominantly for residential purposes. It is composed of dwelling places of various kinds which usually are grouped as to type in sufficient degree to make apparent the existence of more or less clearly defined residential subdivisions or segments. Near the inner limits of this residential area, moderately priced apartments and the less expensive two-family and single-family dwellings predominate, whereas as the outer edge is approached, higher-priced homes and apartments increase in number. The economic status of the inhabitants rises as the distance from the business center becomes greater. Expressed in terms of class, a working-class residential zone surrounds the area of deterioration adjacent to the central business district, and this zone is in turn surrounded by successive zones inhabited by the middle- and upper-class people.

An important feature of the residential belt is the existence within its limits of secondary business centers. These commercial sub-centers have been developed to avoid the inconvenience of access and the inefficiency attendant upon movement to and from the distant and congested downtown section. In some instances, such subordinate centers were the central business areas of communities once distinct from, but since absorbed by, the growing metropolis. Again, subordinate commercial areas have developed in connection with settlements of segregated ethnic groups. In these minor business districts, retail stores, banks, and motion picture theaters constitute the chief economic enterprises.

Various industries usually are located within the residential belt. The chief reason is the need for fairly large tracts of land at comparatively low prices together with nearness to an adequate labor supply. Another factor is the advantage of proximity to the freight and produce terminals which often are found within this area. These, with their trunk-line rail connections, provide accessibility to raw materials and markets. The heavy industry section of a city is likely to be situated either within the residential belt or near the outer edge of the city. Its location is determined by the need for space and for adequate transportation facilities. The tendency is for heavy industry to grow away from the main center of the city.

The outer edge of the residential belt merges imperceptibly into an area suggestively denominated the urban fringe. Although containing large tracts of undeveloped land, it is utilized for a variety of purposes. Industries, farms, cemeteries, airports, open-air amusement parks, golf clubs, and homes, both expensive and inexpensive, are to be found within this section which borders on rural territory and possesses at least a quasi-rural atmosphere.

Beyond the urban fringe, the character of the surrounding region varies with the size of the particular city under consideration. Usually, in the case of small cities, rural life prevails, but in the vicinity of large cities different

types of subsidiary urban communities are found. The suburbs may be residential, industrial, educational, recreational, institutional, or governmental. Differentiation as to type is based on the use or interest which is dominant, but not necessarily exclusive. In varying degrees and in many respects, these communities are dependent on the central city. Another type of community sometimes found within the region under the social and economic dominance of a large metropolis is the populous city which, although relatively self-sufficient, is nevertheless an integral part of a single metropolitan district. Jersey City, Newark, and Paterson, New Jersey, are illustrative of this type of community. They are satellites of New York City.

The rural area surrounding the smaller cities or intervening between the various urban or semi-urban communities of a metropolitan area is used largely for agricultural purposes, but the influence of the city is felt in many ways. Not only are the crops which are raised determined by city demand, but life on the farm is itself altered in numerous respects by proximity to the city. With the development of better roads and increasing use of automobiles, an increasing number of persons who work in the city are establishing homes in this area.

In addition to the three major areas of land utilization, viz., the central business district, the residential belt, and the urban fringe, sections undergoing transition are found in nearly all, if not all, cities. Change is characteristic of city life, particularly in rapidly growing communities, and the alteration of districts in regard to dominant use is a familiar phenomenon. The slow but steady shifting of the business center, the transformation of an exclusive and high-priced residential section into an apartment and rooming house district, the building up of unoccupied areas in the urban fringe—these are typical examples of the changes which seldom escape the notice of those who return to the old home town after an absence of many years. Until the process of conversion is completed, the mixture of uses in the affected areas, reflected in the general appearance of the neighborhood, often creates an atmosphere of confusion, disorder, and instability. Areas in a transitional stage over a long period of time generally become areas of deterioration socially as well as physically.

**Social Solidarity of the Urban Community and Its Dependence on the Outside World.** The social interdependence of individuals is a characteristic of all modern communities (international, national, and local), but the degree of such interdependence is greatest in the city. The city as a whole is dependent on the outside world for its very existence and its individual members are dependent on one another to an amazing extent for the satisfaction of innumerable wants. Cities and their inhabitants are anything but self-sufficient.

The dependence of the city on the outside world is easily demonstrated by considering the source of such necessities as food, clothing, and raw materials. Practically all urban dwellers are engaged in non-agricultural pursuits, with the result that the responsibility for supplying city people with food rests

on the shoulders of the rural farm population. If farmers were to indulge in an extended sit-down strike, the situation of cities soon would become desperate. Clothing, too, is a necessity which the residents of cities are unable to provide for themselves. Clothing factories are situated in cities, but raw materials like wool, cotton, and silk must be furnished them by outside producers. The same is true of the raw materials used in most of the industries having an urban location. In fact, if it were not for the services rendered by the outside world and the demand of outsiders for city-made products, the economic activities of city people would be brought to a standstill.

The dependence of city residents on one another is evidenced in ways too numerous to mention. Specialization of function is characteristic of city life. An urban resident does relatively little for himself. What he needs he buys from others who, like himself, are earning a living through specialization in some line of endeavor. The baker delivers the city dweller's bread, the coal or oil dealer his fuel, and a power company furnishes him with light. City life is characterized by so high a degree of social solidarity that individual welfare is obtainable only through the efforts of the many. A city dweller is a most helpless human being. Impressive demonstrations of this fact have been afforded in recent years by paralyzing strikes of tugboat crews, truckers, street railway operatives, coal miners, and power and light employees. Fortunately, the strikes were terminated soon enough to avert complete breakdowns in the cities immediately affected.

**Complexity of Urban Social Relations.** In comparison with the life of rural areas, the social relations and processes of the city are exceedingly complex. The high degree of social solidarity, the great diversity of occupations and interests, and the concentration of a multiplicity of activities in a limited space contribute to the intricacy of urban social relations.

Virtually every aspect of urban life involves complicated relationships among numerous individuals. A surprisingly large number and variety of associations are brought into existence. These vary in size, composition, and purpose; their inter-relationships are many and complex.

A recent study of the social life of a small industrial city with approximately 17,000 inhabitants revealed a total of 899 associations other than the family, the church, the school, political organizations, and economic organizations like the bank, the factory, and the store. Some of the associations were temporary and lasted only a short time, but many were of the permanent type. The ramifications of associational life in this small community, referred to as Yankee City, are indicated by the following statement:

The associational structure of Yankee City extends to virtually every part of the society—to individuals of both sexes and all ages, to native and ethnic groups, and to all other structures such as the family, the school, the church, and the economic and political organizations. Most associations are themselves interconnected. These affiliations with other groups are so extensive that the individual need only be a member of one of the many associations to be brought more or less intimately into contact with members of these organizations which crosscut the

entire community. The association thus acts as one of the foremost mechanisms of integration in Yankee City society.<sup>7</sup>

A similar study of cities of much greater size undoubtedly would reveal the same phenomenon on a much larger and more complicated scale.

**Heterogeneity of the City Population.** The heterogeneity of city populations is indicated by the familiar remark that you find all kinds of people in the city. An apparent implication of this observation is that the contrary is true of the rural sections. Actually, of course, many, if not all, kinds of people are found in the country. The truth of the matter seems to be that the degree of heterogeneity is greater in the city and that the differences among people are more noticeable and more significant in urban communities in which hundreds and thousands of persons perform their daily tasks within a relatively limited area. Of the many ways in which city folk differ from one another, the most noteworthy are those in regard to which the contrast between city and country populations is conspicuous.

One respect in which the people of cities exhibit a greater degree of heterogeneity than the inhabitants of rural areas is in the matter of nationality, race, and place of origin. In the United States, a much larger proportion of foreign-born whites and the native-born children of foreign-born whites is found in urban than in rural communities. Of course, the percentages vary considerably for individual cities.<sup>8</sup> A high proportion of immigrants have settled in the cities, and since the process of assimilation is slow, differences among individuals associated with nationality remain conspicuous. Unless future immigration occurs on a larger scale than at present, however, national distinctions will gradually dwindle in significance as the proportion of foreign-born and the children of the foreign-born in cities grows smaller.

City populations usually include representatives of the yellow, black, and other races as well as the white. Along the Pacific Coast the proportion of Chinese and Japanese is higher than elsewhere. In the North and in the South, especially in the eastern half of the country, the number of Negroes in cities has increased steadily. The movement of Negroes into the cities of the North has been especially marked during the past few decades and has given rise to numerous troublesome social problems. Racial amalgamation requires so long a period of time that racial differences will continue to exist indefinitely in American cities.

In addition to dissimilarities in nationality and race, city populations exhibit heterogeneity in regard to place of origin. Migration from country to city has been the most important cause of the phenomenal increases in urban population. Migrants have come from many different places in the United States, and unless a person is brought to a given city when extremely

<sup>7</sup> W. L. Warner and P. S. Lunt, *The Social Life of a Modern Community* (New Haven, Yale University Press, 1941), p. 301. See Chapter XVI.

<sup>8</sup> In 1940 the proportion of foreign-born whites was 3.99% for the rural and 12.27% for the urban population. It was 27.9% for New York, 20.4% for Cleveland, 19.8% for Chicago, 19.7% for Detroit, 15% for Philadelphia, 14.3% for Los Angeles, 12.6% for Portland, Ore., 9.9% for Omaha, and 8.15% for Allentown, Pa.

young, the imprint of his early social environment will have been left upon him. In so far as significant sectional and regional differences exist in the United States, the person who migrates from country to city, from city to city, or from one section to another will find it necessary to adjust himself to a different cultural environment. Most immigrants from foreign countries and migrants from country to city or city to city are adults who may, and often do, find the problem of adjustment difficult to solve. The congregation of a large number of people with different backgrounds in the city produces a variety of social and political situations of major significance.

The residents of cities not only have come from different places, but many of them stay for a comparatively short time. Modern industrial developments and improved methods of transportation promote movements from place to place. The consequent turnover in the population of cities, relatively small as it may be, is a contributing factor to the cultural variety and instability which is chiefly attributable to the diverse origins of city people.

Another phase of the heterogeneity of city populations is diversity in the ways of earning a living. According to statistics gathered by the Bureau of the Census which show the number of persons 14 years old and over engaged in gainful occupations, every city with a population of 100,000 or more has one or more individuals employed in each of the 44 industry groups and subdivisions which are listed.<sup>9</sup> Even farmers are to be found. However, the overwhelming proportion of urban dwellers are engaged in non-agricultural pursuits. Essentially the same diversity of occupations is found in cities with a population under 100,000. Although a marked degree of occupational variety is characteristic of all cities, comparisons of individual cities and of groups of cities based on size show that the relative importance of different occupations varies.<sup>10</sup>

Diversity of occupations is by no means peculiar to cities. The rural non-farm population of the United States constitutes nearly 45% of the total rural population, and manufacturing, trade, and transportation are important occupations of many of those who dwell in agricultural villages or in the open country. In variety of occupations, however, cities unquestionably surpass the country.

From the standpoint of distribution of wealth, the city has its rich, middle, and poor classes. The same is true of the country, but greater extremes of wealth and poverty as well as a greater variety of economic levels are found in the city. Moreover, the conditions of city life bring persons of different economic status into more frequent contact with one another. These contacts are important even though they may be only temporary, casual, and impersonal.

Contrary to popular impression, poverty is probably no more widespread in the urban than in the rural sections. Not only do the comparative incomes of agricultural and non-agricultural classes support this view, but

<sup>9</sup> *Sixteenth Census of the United States; 1940 Population*, Vol. II. "Characteristics of the Population," Part I, United States Summary, Table 74.

<sup>10</sup> See W. F. Ogburn, *Social Characteristics of Cities* (Chicago, The International City Managers' Association, 1937), Chapter II.

also the continuous migration of people from country to city—a phenomenon which hardly would occur in the face of a higher level of economic life in the country.<sup>11</sup> However, destitution in the cities is more serious than in the country, in at least one respect. The poverty-stricken city dweller is virtually dependent upon purchase as a means of securing the primary necessities of existence, whereas the rural poor ordinarily are able to raise enough food to avoid actual physical destitution and are in a better position to provide themselves with fuel and shelter. This disadvantage of poverty in the city is partially offset by the greater number and superior quality of urban relief facilities.

The differences among urban inhabitants from the standpoint of nationality, race, place of origin, occupation, and economic status probably account for many of the other ways in which residents of a city differ from one another. An individual's occupation and his financial resources affect his outlook upon life, his interests, his activities, and the type of home he maintains. His nationality, race, and place of origin have a bearing upon his cultural background, the language he speaks, the type of neighborhood in which he lives, and his ability to adjust himself to the social norms of the urban community. To enumerate all of the ways in which individuals or groups of individuals in cities differ from one another would be a sizeable task. In regard to religious affiliation, education, personality, political connections and many other matters, variety in great degree is typical of city populations.

This heterogeneity assumes special significance because of the limited space within which city people carry on their daily activities. Restricted elbow-room brings people into contact with one another even though they are unacquainted and are unlikely ever to establish direct social relationships of any sort.

**Urban Ways of Life.** There are some important differences between urban and rural ways of life which are attributable in large measure to the social functions of cities and to such conditions of city life as congestion and limited space. These differences are particularly striking in connection with the work, the play, the worship, and the family life of people in the city.

Attention already has been directed to the great variety of occupations which city people pursue. In only one respect are virtually all city dwellers alike in so far as occupation is concerned, viz., scarcely any of them are engaged in agricultural pursuits. This fact affects their mode of life in many ways. For one thing, the city man works in one place and lives in another, with the result that a part of his day is spent in traveling to and from work and the greater part of the day is spent away from home. Moreover, since a definite relation between home and work is lacking, the city dweller is more likely to change his place of residence frequently. Shifting from house to house

<sup>11</sup> The development of a "back to the farm" movement during the depression of the thirties supports the view that migrants from the country to the city secure economic betterment in the city under normal business conditions. In 1932, the migration to farms exceeded migration from farms by 325,000.

or from apartment to apartment does not involve the same considerations as does a change of farms for the farmer. Again, by reason of the character of his occupation, whatever it may be, the person who lives in the city must obtain practically all the goods and services he desires through purchase. Consequently, a steady money income becomes a matter of primary importance in his life. The means of livelihood in the city also account for the fact that the city family is not an economic unit in the sense that a farm family usually is.

The recreational activities of urbanites are affected in several ways by the congestion and space limitations of city life. Generally speaking, urban recreation is passive, space-economizing, and organized. Although active participation in games is increasing, a large proportion of city dwellers engage in recreational activities merely as spectators. In this way, hundreds or thousands of persons are entertained in a relatively small space. Even the amusements which involve active participation tend to be of the space-economizing type, for example, bowling, tennis, pool, and dancing. The accommodation of large numbers of persons in a limited space requires organized effort, and it is for this reason that organized forms of recreation are so common in cities. Urban recreation also is commercialized to an appreciable extent. The provision of amusement and recreational facilities for people has become a profitable business and the conditions of city life are such as to create numerous opportunities along this line.

The religious life of city dwellers shows the influence of urban environment chiefly in two respects, namely, religious tolerance and the type of church. As might be expected in a community composed of "all kinds of people" who belong to a variety of religious sects, people are relatively broad-minded in regard to the religious life of the individual. In comparison with rural communities, there is less intolerance of different creeds and less adverse comment about those persons who lack connections with any church. To some extent, the church itself has undergone adaptation to the conditions of city life. Congregations are fairly large, programs tend to be comprehensive, and worship is rather highly organized. Membership in the church inclines to the impersonal, the content of religious belief exhibits innovation, and the financial resources of the church are fairly substantial. Urban churches lay considerable stress upon social service and often serve as centers of social life.

In the city, two forms of home life, the family and the non-family, are distinguishable. The non-family type of home is one maintained by single persons living either singly or collectively. To the unmarried man or woman, home is often a room in a lodging house, a one-room apartment, or a suite shared with other persons. Many such homes are to be found in the city, sometimes scattered among homes of other types and sometimes concentrated in distinct non-family areas, for instance, the rooming house district. Their large number may be accounted for by the relatively high proportion of unmarried, widowed or divorced adults in urban areas.

The city family differs in various respects from the rural. It is smaller, less

cohesive, less of a functional unit, more mobile, characterized by greater anonymity, and housed in more cramped quarters. High land values and rentals, together with the desire of persons to live near the city's centers of activity, account for the extensive use of residential structures of the multiple type, i.e., two-family or more. Limited space for dwelling purposes tends to reduce the size of the family, affects the problem of raising children, makes for less privacy and, like mechanization of the home, influences such family activities as cooking, sewing, and gardening. Moreover, the prevalence of multiple dwellings partially accounts for decreased home ownership. The rental rather than the ownership of homes combined with the absence of that direct relation to the soil involved in agricultural pursuits is a cause of the frequency with which urban families change their place of residence.

Mobility of the family contributes to the anonymity of individual and family life in the city. Anonymity, which is a natural concomitant of large numbers and congestion, also is promoted by the spread of social interests over an extensive area and by the weakness of neighborhood ties. The primary face-to-face contacts characteristic of a vigorous neighborhood life are in turn discouraged by the mobility of the family, the anonymity of both individual and family, congestion, and the diversity of interests and variety of contacts in an urban environment. Although the influence of the neighborhood on the family usually is limited in the city, available evidence supports the view that the general character of the residential environment is rather influential. There appears to be a correlation between the social and moral standards of the family and the social atmosphere of the area within which it resides.<sup>12</sup>

Generally speaking, the conditions of life in the city tend to loosen the ties of the home. An indication of diminished cohesiveness is the greater frequency of divorce in the cities than in rural districts, but disintegration of the urban family is not so much a matter of separation of husband and wife as of the departure of children, the many outside interests and activities of all members of the family, and the curtailment of family functions. Family functions decline in an urban environment, particularly in the largest cities. Members of rural families work, play, and worship together to a greater extent than do the members of families in urban areas.

Crime and vice are matters which merit consideration in a discussion of the ways of urban life. The rate of criminal behavior among city dwellers is higher than in the country and some of the conditions of city life seem to be a major cause. Areas of deterioration and over-crowding tend to promote the production of criminals; the vast amount of movable wealth in cities constitutes a great temptation to persons who are inclined to stray from the path of rectitude; and the large city populations afford relative immunity from detection. Among other factors which have a bearing on the crime rate are broken homes, inadequate recreational facilities, and the stress and strain of cultural adjustments which migrants experience. All

<sup>12</sup> N. Carpenter, *The Sociology of City Life* (New York, Longmans, Green and Co., 1932), pp. 241-245.



of these causes of criminal behavior exist in cities to a greater extent than in rural communities.

The moral standards of urbanites appear to be as high as those of the rural population. At least, there is no conclusive evidence that the contrary is true, as asserted by persons who look upon cities as hot-beds of evil. However, commercialized vice seems to be a "contribution" which the city has made to civilization. This is another of the many manifestations of the pecuniary basis of city life. Causative factors include the anonymity and mobility of city life, the relatively weak family ties, and the large proportion of unmarried persons, young adults, and visitors, often from the country, in the city. Then, too, the number of mentally unstable persons is relatively large in cities, and the over-stimulation and insecurity of city life are likely to have adverse moral effects.

**Other Characteristics of City Populations.** Limitations of space permit consideration of only a few other characteristics of city populations in the United States. The age and sex composition of urban communities and the birth and death rates have been selected for comment.

In comparison with rural sections, cities contain a higher proportion of people in the age groups which are most productive. A higher percentage of persons from 20 to 29 years is found in the cities than in the country; also in the larger cities rather than in the smaller. Cities also enjoy a substantial lead over the rural districts in the 30-44 age group, but they include only a slightly higher proportion of persons ranging from 45 to 64 years of age. For the age groups from 0-4, 5-19, and over 65, the proportions are higher in the rural sections than in the cities. Generally speaking, the percentages of children, youths, and elderly people are highest in the country, lowest in the largest cities, and vary inversely to population between these extremes. However, this generalization is subject to exceptions. The general pattern of age composition varies from region to region as well as from period to period, and marked variations from the general pattern exist in the case of individual cities.

The preponderance of people in the productive ages in cities is due to several factors. Most immigrants from abroad and migrants from farms to cities are persons who have reached these ages. Urban birth rates are lower and urban families are smaller than those of the rural sections, largely because of fewer and later marriages and the economic disadvantages of having a large number of children in the city. Death rates are higher in the city and life expectancy shorter. Many elderly people leave the city for an environment which involves fewer stresses and strains. Old people from both city and country are settling in large numbers in small villages.

The sex ratio, i.e., the number of males per hundred females, for the United States as a whole reached its lowest point, 100.7, in 1940. In the urban areas, the ratio was 95.5; in the rural, 107.8. Although women outnumber men in the urban population as a whole, such is by no means the case in all cities. The predominant type of work in each city seems to be an important

factor. Thus in steel cities like Michigan City, East Chicago, and Gary the ratios in 1940 were 122.8, 113.3, and 108.3 respectively,<sup>18</sup> whereas in certain cities with numerous occupational opportunities for women the ratio fell below the average, e.g., Washington, D.C., 91.9, and Pasadena, Cal., 79.2. The proportion of foreign-born whites and Negroes also affects the sex ratio of individual cities. Among the reasons for the excess of females over males in cities in general are the better economic prospects for women in cities than in rural areas, the lower female death rates in relation to the rate for males in the city as compared with the country, and the greater attractions of cities for girls who seek escape from the customary patterns of conduct in rural areas.

Urban birth rates are relatively lower and death rates higher than those of rural communities. The lower rate of births in spite of the favorable age composition of cities is attributable to a variety of causes. Among them are later and relatively fewer marriages, the economic and social disadvantages of large families in the city, crowded living conditions, and the entrance of women into gainful occupations. Some authorities contend that urbanites are not so productive biologically by reason of sedentary occupations and non-laborious pursuits. The higher rate of death seems to be due to such factors as the wear and tear of city life, excessive noise, absence of sunlight, too much smoke and dust, sedentary living, higher homicide rates, and greater accident hazards. However, for certain causes of death, e.g., typhoid, dysentery, smallpox, and malaria, the urban rate is lower than the rural, while for others, such as scarlet fever and diphtheria, the differential is becoming narrower. The urban infant mortality rate is lower than the rural. Cities make the best showing in the germ diseases which can be controlled through measures of preventive medicine, sanitation, and treatment.

#### GOVERNMENTAL CONSEQUENCES OF THE SOCIAL AND PHYSICAL CHARACTERISTICS OF CITIES

The proper government of cities and the development of a capacity for effective self-government on the part of urban populations are essential to the achievement of high governmental standards at both regional and national levels. Local political conditions are especially significant in an urbanized society in which cities exert a dominant influence on the life of the people. The general problem of city government is: (1) to plan and direct the growth of cities in the light of present and anticipated social conditions; and (2) to provide the services and regulations which will enable city dwellers to live an orderly, prosperous, wholesome and culturally progressive life. Conflicting interests require adjustment, community consciousness and community spirit need to be fostered, and those features of physical and social environment which are essential to individual and general welfare must be provided.

<sup>18</sup> Examples of other cities well above the urban average were Stockton, Cal., 115.9; Hoboken, N. J., 107.8; Detroit, 104; San Diego, Cal., 103.9; San Francisco, 103.3.

An incomplete picture of the city as a social entity has been presented in the foregoing pages, but perhaps enough has been said to give some insight into the kind of community which a city government is called upon to serve. Presumably, all of the attributes of the city as a social entity have governmental significance. The social solidarity of the city, the complexity of its network of social relations, the characteristics of its population, and the ways of life of its inhabitants determine and condition the functions of municipal government.

For instance, municipal recreation programs are shaped by the necessity for space-economizing amusements, by the large number and great variety of persons whose recreational needs require satisfaction, by the age composition of the urban population and, to mention but one more of many influential factors, by the mobility of city families and the lack of a vigorous neighborhood life. Again, the problem of law enforcement in the city is complicated by the variety of necessary regulations, the heterogeneity of the population, the anonymity and mobility of city life, the opportunities for crime and vice, and the congestion of population.

In the social welfare field, many of the situations which confront welfare authorities are traceable to the conditions under which urban families live, to broken homes, to the stress and strain of adjustment to an urban environment, to over-crowding, to economic distress and, among other things, to the pecuniary basis of urban life. To cite but one more example, the declining size of urban families directly affects the number of housing units which are required in an urban community, and this, in turn, requires consideration in the solution of water supply problems.<sup>14</sup>

The governmental consequences of functional differentiation in the use of land are well known to persons who participate in one way or another in the solution of problems of city government. In the performance of various municipal functions, sectional differences have a vital bearing on the nature of the policies to be adopted and on the choice of methods of administration.

For example, fire prevention and fire fighting are functions which are clearly affected by sectional considerations. Of the three primary types of fire hazard, viz., the structural, the occupational, and the personal, the first two are definitely related to the type of section (business, industrial, or residential) and even the third has a sectional aspect, inasmuch as the attitudes and habits of the people in different parts of a city vary.

Proper measures of fire prevention depend on the hazards to be overcome, and the precise nature of the latter is largely determined by the characteristics of neighborhoods. As for fire fighting, the type of apparatus, the technique to be used, and the number and location of fire fighting companies are matters which can be settled satisfactorily only if due consideration be given to sectional differences. Extinguishing fires in the downtown business district where buildings are high and close together, or in the crowded

<sup>14</sup> V. Roterus, "Some Effects of Population Changes on Municipal Services", *Public Management*, Vol. 29, June, 1947, pp. 158-160.

tenement areas of a city, presents problems which differ in many ways from those encountered in fighting fire in the high-class residential sections of an urban community.

In different ways and to varying degrees, the rendition of many other municipal services is affected by sectional considerations. The design of water supply and sewerage systems requires knowledge of the character and the distribution of population, of the purposes for which water is used, and, in the case of storm sewage, of the extent to which the land area has been rendered refractory to natural drainage by reason of the construction of buildings, sidewalks, and street pavements. Practically all storm water must be removed by sewers in the downtown business area, whereas rainfall in the least built-up residential areas is taken care of in large measure by natural drainage.

Among other services in which the sectional factor plays an important part are the collection of garbage, ashes, and rubbish; the location of schools, parks, playgrounds, and public buildings of various types; police protection; traffic regulation; the provision of transportation facilities; public health administration; the paving and cleaning of streets; social welfare work; city planning and zoning. Obviously, too, the fact that sections change in character greatly complicates the general task of city government. Failure to look to the future and to anticipate the character of sectional developments with some degree of accuracy may add greatly to the cost of public services. The location of an expensive school building in a district destined soon to lose the greater part of its school population is a case in point.

Sectional differences within urban areas also have an effect on the organization of municipal government and on city politics. For example, one of the questions to be settled in creating a city council is whether councilmen should be elected from the city at large, by districts, or by some combination of these two methods. Among the arguments in favor of the district plan is the contention that it provides for the representation of sectional interests, whereas election at large may leave the inhabitants of certain parts of the city without spokesmen on the council. Again, provision of a satisfactory governmental organization for metropolitan areas requires a thorough understanding of the spatial aspects of urban life. It is necessary to determine the extent of a metropolitan area, to anticipate the character of its future growth, and to ascertain the nature and relationship of its component parts. In the light of these and other considerations, a sensible decision may be made concerning the appropriate degree of governmental centralization and the most suitable type of governmental machinery.

As for the realm of city politics, the effects of sectional differences within cities are evidenced in many ways. Party leaders take sectional as well as group interests into consideration in nominating candidates for office, in conducting election campaigns, and in formulating the party's policy concerning the issues of municipal government. The political behavior of the inhabitants of a city seems to bear some relation to the type of neighborhood; certain pressure groups have a sectional basis; and cleavages within the city

population sometimes develop along territorial lines, e.g., the north side versus the south side. Of course, many of the political consequences of the spatial pattern of urban development are attributable ultimately to the conflicting social and economic interests of individuals and associations of individuals, but it is evident that to some degree the interests of urban dwellers are an outgrowth of neighborhood influences.

The physical and social characteristics of cities affect the problem of municipal government in many ways other than those which have been chosen for illustrative purposes. Unfortunately, it is difficult to determine with precision just what the relationships of cause and effect are in a social structure as complicated as that of the city. What, for example, are *all* of the consequences of the sex and age composition of urban populations? However, as psychologists, sociologists, and other social scientists reduce the area of the unknown concerning the social behavior of men and expand their knowledge of the city as a social phenomenon, the chances for more adequate solutions of urban problems in general will become increasingly favorable.

In the meantime, those who are concerned with the government of cities will do well to remember that the city is not merely a municipal corporation, i.e., a distinctive type of artificial personality created by law. They will profit in many ways by utilizing all available information about the city as a social entity.

The city has been said to be the most highly specialized social-economic structure which society has developed. It also has been referred to as the cradle of civilization, on the ground that cities have been the chief seats of productive originality in art, science, letters, and political development. Even those who dispute this claim concede that life in cities is stimulating by reason of the many contacts it affords with a great variety of people, the interruptions in the continuity of individual and social life due to social mobility and contacts of mobility, the crowds, the many emotion-inducing situations, the large number of secondary group relations, and the diversity of such physical stimuli as sound, movement, light, and vision. The hustle and bustle of the city, markedly in contrast with the calm and peaceful atmosphere of the country, constitutes a challenge to action.

What has been said about the city as a social phenomenon holds true in a general way for all cities, but it is noteworthy that no two cities are identical in every respect. The variations from the general pattern are numerous. They are determined by such matters as size in population and area, general location, topography, rate of growth, period of growth, and the nature of a city's economic base, whether manufacturing, retail trade, wholesale trade, education center, transportation center, resort community, government center, dormitory suburb, or diversified.<sup>18</sup> Each city has a personality of its own and features peculiar to itself. The observant traveler who has sojourned in many cities is keenly aware of the differences among them.

<sup>18</sup> The economic classification of cities is discussed in *The Municipal Year Book, 1948*, (Chicago, The International City Managers' Association, 1948), pp. 31-39. Data for particular cities with a population over 10,000 are presented in Table IV, pp. 51-70.

but sometimes he may find it difficult to state just what they are. One may sense the atmosphere of a place without being able to express it in precise terms. New York, Chicago, Philadelphia, Boston, Detroit, Cleveland, Cincinnati, Baltimore, New Orleans, Dallas, San Francisco, and Los Angeles are all alike in many respects, but very different in others. For the student of government the important lesson to learn is that knowledge of the nature of cities in general always should be supplemented by a careful survey of each particular city in order to detect the deviations from the general pattern which may have a vital bearing on the solution of governmental problems. It should be kept in mind, too, that the city of tomorrow may differ greatly from the city of today, as a consequence of technological developments and fundamental changes in the social order.

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## CHAPTER II

### MUNICIPAL FUNCTIONS

#### *Outline*

- The Protection of Persons and Property
  - Police Services
  - Fire Protection and Prevention
  - Building Regulations
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  - Miscellaneous Protective Functions
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- City Planning and Zoning
  - City Planning
  - Zoning
- Auxiliary Functions

A BRIEF SURVEY of the major functions of municipal government may promote better understanding of the problems to be solved in devising machinery and procedures for the government of cities. It is logical to know something about the uses for which any piece of machinery is intended before undertaking its design or before passing judgment on its utility. In organizing governments and establishing governmental procedures men are devising tools to be used for the achievement of various social objectives. Perhaps some of the defects in the governmental organization of cities in the United States might have been avoided if the framers of city charters had paid more attention to both the character of municipal functions and the nature of the city as a social entity. Too frequently, city governments were organized in imitation of the national and state governments on the assumption that machinery suitable, or believed to be suitable, for national and state governmental purposes would prove equally satisfactory in meeting the governmental needs of urban communities. Examples of imitation are



the establishment of bicameral city councils and the organization of city governments in conformity with the principles of separation of powers and checks and balances. Of course, many governmental devices may prove satisfactory at different levels of government, but this fact fails to justify disregard of the functions of government in dealing with problems of organization and procedure.

As units of local government, cities act as agencies for the administration of state policies within their territorial limits and as instrumentalities for the solution of many problems peculiar to urban conditions of life. The latter rôle overshadows the former in importance. Municipal functions multiply rapidly as cities increase in size, but even the governments of the smaller communities render a variety of essential services. The most important of the many activities of city governments will be described briefly under the following broad headings: (1) protection of persons and property; (2) welfare services; (3) cultural functions; (4) public works and utilities; (5) city planning and zoning; and (6) auxiliary services. Municipal functions are constantly undergoing change. Old services are being broadened and new ones added from year to year as urban conditions change and as the public demand for governmental services increases.

#### THE PROTECTION OF PERSONS AND PROPERTY

**Police Services.** An important rôle in the protection of persons and property is played by municipal police forces which vary in size from the one-man departments of very small villages to the New York City force of more than 18,000 full-time officers and civilians. The suppression of crime, certain crime prevention functions, and traffic regulation constitute the primary responsibilities of city police authorities. Maintenance of order and the enforcement of laws present many difficulties and involve a variety of activities which increase in magnitude in proportion to the size of cities. The effective discharge of police functions requires vigorous leadership, sound organization, a competent personnel, adequate records of various types, an up-to-date communication system, and modern equipment.

The activities of police agencies in connection with the suppression of crime include the patrolling of streets, the investigation of complaints, the detection of crimes, the identification and apprehension of criminals, and the custody and care of prisoners. Cooperation with prosecuting officials and appearances in court also deserve special mention.

Patrolling the streets of a city is an important phase of police service. Two problems which require careful solution are the distribution of the force by day and by night and the establishment of satisfactory patrol routes in all parts of a city, especially in those in which the crime hazards are greatest. The presence of police officers throughout a city serves as a deterrent of crime by promoting prompt investigation of complaints, by increasing the chances of detecting crimes and capturing criminals, and by adding greatly to the hazards confronting violators of the law. Effective patrolling and a dependable communications system go hand in hand. Not so many

years ago uniformed police patrolled a city on foot or on horse, but today patrol is entirely motorized in some cities and partially motorized in most places with a population over 10,000. To an increasing extent, police cars and motorcycles are being equipped with radio facilities, two-way or one-way, and this development in the communication field has proved a tremendous aid to the police in their battle against crime, especially in blocking the escape of criminals.

The detective service, the bureau of criminal identification, and the crimes laboratory are instrumentalities for the apprehension of criminals. Whether or not all of them are provided in a given city depends on its size, the magnitude of its crime problem, and the extent of its financial resources. Detectives have to be skilled to cope successfully with the criminal element of today and the need for specialists in each type of crime accounts for the establishment of special divisions within the detective service of the larger cities. Examples are the homicide, stolen automobile, pickpocket, and missing persons divisions. The bureau of criminal identification is concerned with fingerprints, photographs, *modus operandi* files, and other records which aid in the identification of criminals, whereas the crime laboratory conducts tests of one type or another, e.g., for the identification of firearms, blood, hair, and wood.

Municipal jails are used primarily for the detention of lesser offenders and persons accused of major crime who are awaiting trial. The provision of penitentiaries and reformatories for the incarceration of individuals convicted of serious offenses has become the responsibility of state governments. Limited though the use of a city jail may be, it is important that it be kept in satisfactory condition and that the inmates be properly fed and controlled. Some cities maintain juvenile training schools, detention homes, and prison camps and farms.

Cooperation between prosecuting authorities, the courts, and the police is absolutely essential to effective law enforcement. The good work of city policemen and detectives often is nullified by the incompetence and political chicanery of the prosecution and the bench. On the other hand, city police forces have weaknesses of their own, and the courts, the prosecuting authorities, and the police are all handicapped in the discharge of their functions by conditions beyond their control, viz., too many laws, unenforceable laws, excessive technicalities of procedure, subversive political influences, and improper policies concerning the treatment of criminals.

Another important function of city police is the enforcement of traffic regulations. However, other agencies of city government are necessarily involved in the solution of the traffic problem as a whole. The two objectives to be achieved are the free and rapid movement of traffic and a high degree of safety in connection with this movement. Major causes of traffic congestion in cities are the inability of streets to accommodate a sufficient number of vehicles at an adequate speed, the inclusion in the stream of traffic of units which interfere with its freedom of flow, and unsatisfactory direction and control.

Such phases of the traffic problem as the laying out of new streets, street

widening, grade separations, the establishment of traffic circles, and the location of buildings which are convergent points for traffic are the concern of planning and engineering agencies. For expert study of the character, extent, and movement of traffic in order to obtain the information which determines the nature of physical improvements and traffic regulations, the services of a traffic engineer are necessary.

Although the chief duty of the police is the enforcement of regulations pertaining to traffic movement and to parking, the direction of traffic, and the investigation and reporting of accidents, the experience of the police in the discharge of these duties provides them with information which is needed by the agencies mentioned above and by the city council. The police department also participates in the program of educating the public in regard to traffic problems.

The prevention of crime necessitates action on many fronts which fall outside the province of police departments. Among the major causes of crime are poverty, ill health (both physical and mental), bad housing, inadequate recreational facilities, and cultural maladjustment. City departments of health, social welfare, and recreation, rather than the police, are the appropriate agencies for doing much that needs to be done in connection with elimination of the causes of crime. Even so, the police department is in a position to make a substantial contribution to crime prevention, and more attention is being paid to this phase of police work than formerly. The opportunities for crime prevention work are great in dealing with juveniles in general and youthful delinquents in particular. By organizing boys' clubs, junior legions of honor, and junior police, by gaining the confidence of boys and girls, and by the proper handling of juvenile offenders, the police can help to reduce crime among younger people. The police department, if functioning properly, cooperates with other community agencies which are engaged in the task of directing youth activities along the proper channels and in developing a broad program of crime prevention.

In addition to the functions which have been mentioned, city police are called upon to engage in numerous other activities, many of which ought to be assigned to other city agencies. The situation in this respect varies from city to city. Among these additional activities are public ambulance service; registration of voters; census taking; operation of dog pounds; first aid to the sick and the injured; ice-breaking in navigable waters; the inspection of elevators and places of public assembly; the storage of liquids and inflammables; the licensing of various private enterprises, such as dance halls, street vendors, pawnbrokers, and junk dealers. It is fairly obvious that the police are not competent to perform some of these activities, e.g., the inspection of elevators, and that the broader the scope of such special services the less the opportunity for concentration on the performance of primary functions.

**Fire Protection and Prevention.** Loss of life and property as a result of fire has been greater in the United States than in other countries.

From 1920 to 1930 the property loss per year fluctuated around \$500,000,000; during the 30's it decreased to as low as \$250,000,000, and thereafter it rose again to over \$400,000,000 in 1944. The preliminary estimated loss for 1946 and 1947 is \$561,000,000 and \$700,000,000 respectively. There are many reasons for the great loss by fire in this country, viz., carelessness and ignorance, the inflammable nature of our cities, the national disposition to tolerate waste, the temptations to arson resulting from over-insurance, lack of emphasis on fire prevention, and lack of strict liability laws pertaining to the outbreak of fires.

The activities of city fire departments pertain to both fire fighting and fire prevention. Unfortunately, the tendency in many cities has been to place far more emphasis on the former than on the latter. Effective fire fighting requires properly trained firemen, mastery of the technique which is best adapted for dealing with the various types of fire, appropriate equipment, an adequate water supply, a good fire alarm system, and a satisfactory organization of the fire department. Geographical distribution of the fire fighting force is a phase of organization to which careful attention must be given if the best results are to be achieved. In solving the various problems involved in the fighting of fires, American cities in general have made an excellent record and have developed fire-fighting forces which probably are the best in the world, but in the field of fire prevention their achievements have been none too good.

The basic problem of prevention is to prevent the outbreak of fire by eliminating as many causes of fire as possible. A large proportion of fires are due to such strictly preventable causes as defective chimneys and flues or to partly preventable causes like spontaneous combustion and sparks from machinery.

The ways and means of prevention are various. Curtailment of the basic physical, occupational, and personal hazards may be achieved through the adoption and enforcement of: (1) a building code which establishes minimum standards in regard to design, materials, and construction for various types of buildings; (2) special ordinances regulating garages, theaters, the storage of explosives and inflammables, fireworks displays, and the burning of refuse, (3) personal liability laws, and (4) zoning ordinances. Other equally important measures include educational programs for school children and adults, clean-up campaigns, and the elimination of over-insurance by securing the cooperation of insurance companies. Satisfactory results in the fire prevention field depend very largely on public cooperation, on the frequency and care with which investigations and inspections are made, both in the first instances and at the follow-up stages, and on the vigor with which steps are taken to secure compliance with laws and orders. Agencies of the city government other than the fire department participate in the development and execution of a program of this type, but the fire department should provide the necessary leadership and do much of the work involved.

**Building Regulations.** Regulations concerning the design, construction, equipment, and occupancy of buildings are necessary not only to reduce fire hazards, but also to protect the public against the dangers to life and limb resulting from faulty construction and against the menaces to health associated with the occupancy of poorly-designed and equipped buildings. State and municipal building codes establish the minimum standards which are to be met in the erection of new and the alteration of old structures. The detailed provisions of these codes differ for the various categories of buildings and other structures which the codes establish.

Typical procedure for the enforcement of regulations pertaining to new structures and to the alteration of old ones is to require submission of plans for approval before the work of construction begins, to issue a building permit if the plans are satisfactory, to carry on inspection during the course of construction to insure conformity to specifications, and to issue a certificate of occupancy after completion of construction only if requirements of the building code have been met. Periodical inspections are necessary in connection with elevators, power plants or heating equipment. Re-inspection of older buildings is required to compel conformity to new regulations of certain types and to check the condition and use of structures with respect to safety. It is highly important that the building-inspection services be under professional guidance and that competent and honest inspectors in sufficient number be employed.

**Public Health.** Good health is essential to individual happiness, to economic well-being, and to social welfare in general. To a certain extent, the health of an individual depends on his heredity and on his own habits and conduct, but in large measure personal health is determined by conditions and circumstances with which the individual alone is unable to contend. Group action is necessary and so health becomes a public problem. The public health services of municipal government are second to none in importance.

In public health programs greater emphasis still is placed on preventive rather than on curative measures. Cure is essentially an individual matter which has commanded the attention of public health authorities chiefly in so far as curing a disease provides a means of preventing its spread or receives recognition as a community responsibility in the case of the dependent sick. The movement for socialized medicine in some form indicates a growing conviction that community action is necessary to make adequate medical care available at reasonable cost to all classes of the population. However, it is unlikely that cure will displace prevention as the chief field of activity of public health agencies.

The public health functions of city governments, most but not all of which are performed by the health department, vary from city to city according to size, conditions, resources, and the extent to which their importance is appreciated. One of the most important phases of health work is the prevention and control of communicable diseases. In this connection

health authorities strive for the effective reporting of cases, engage in systematic investigation, establish quarantine, supervise contacts, detect and control carriers, enforce concurrent disinfection of infected discharges, and provide hospital treatment for difficult cases. Immunization is encouraged by furnishing a free supply of sera and vaccines.

Another major field of public health activity pertains to child health. Some of the specific functions involved are the operation of pre-natal and infant welfare clinics, the medical examination of school children, the supervision of children in industry, and the licensing and supervision of midwives.

Along the line of sanitation, public health authorities attempt to prevent and to correct insanitary conditions of house occupancy, to eliminate dangerous soil pollution, to remove breeding places of flies, rats, and mosquitoes, to prevent the use of common towels and drinking cups, and to control promiscuous spitting. Efforts are made to eliminate insanitary conditions in barber shops, public comfort stations, and swimming pools.

To reduce the danger to health from contaminated milk, food, and drugs, health agencies license dealers, inspect premises, collect samples for examination, and enforce minimum standards as to quality as well as a variety of regulations concerning the handling of these commodities. Medical examination of persons who handle food and milk often is required.

Other important functions of health authorities include the collection of vital statistics, the operation of hospitals and laboratories, public health educational activities, and last, but by no means least, the public nursing service which is the key to success in the achievement of health goals in general. The problem of a safe water supply and effective disposal of wastes will be discussed under the heading of public works.

**Miscellaneous Protective Functions.** Smoke abatement is a function of city government which is justified by aesthetic, economic, and health considerations. Extensive damage to buildings, clothing, food, and vegetation results from the smoke nuisance, the general appearance of a city is adversely affected, and the health of individuals is clearly impaired. Since incomplete combustion is the cause of smoke, waste of fuel also is involved.

The underlying causes of incomplete combustion are faulty design and construction of fuel burning equipment, improper firing, type of fuel used, and presence of non-combustible materials in the fuel. To name the causes is to indicate the remedies. The task of city officials is to establish and enforce minimum standards for the construction of furnaces and chimneys, to regulate the use of fuels, and to bring about the adoption of satisfactory devices and practices in firing. Education, inspection, and a firm hand in dealing with persistent violators are the means of making headway in the battle against smoke.

The regulation of weights and measures is undertaken to protect the public against various fraudulent practices as well as against losses due to the use of defective equipment. There are two aspects of this regulatory

problem, viz., (1) insuring the accuracy of weighing and measuring devices, and (2) preventing sharp practices in weighing, measuring, and packaging commodities. Scales, gasoline pumps, weights and measures of various types are subjected to regular inspections and tests for correctness. Those found to be satisfactory are appropriately marked and certified, whereas those which are incorrect are condemned. Safeguarding the public against dishonesty in the use of weighing and measuring equipment presents a more difficult problem. This service requires the investigation and testing of purchases which are made by private persons or by officials of the city government.

### WELFARE SERVICES

The services which will be discussed under the heading of welfare are those which are rendered for the direct benefit of the destitute, the dependent, the defective, and the delinquent. Housing also will be considered in this section because in the present stage of development of this service the major purpose is to provide good homes for the lowest income groups so as to eliminate one of the environmental causes of certain social evils. Public health, recreation, education, and even other services might be placed in the welfare category, but these functions are rendered for the benefit of the entire population without pronounced emphasis on the immediate needs of special groups of persons. Of course, welfare services in the narrower sense are of ultimate benefit to the entire community.

Consideration of the welfare activities of city governments is complicated by the fact that the federal, state, county, and city governments all are involved in one way or another, and the rôle of the city in this field varies from time to time and place to place. The prevailing tendency in the United States since the early 30's has been to make the county the primary unit for the local administration of many welfare activities in both urban and rural areas. Consequently, the student is cautioned against concluding that cities in general perform all of the various services about to be described.

**Social Welfare Activities.** Social welfare activities fall into two broad categories according to purpose, viz., (1) various services which are necessary to provide immediate relief for the needy of different types, and (2) activities of a preventive character directed toward elimination of the causes of distress. Since private agencies also carry on activities in the social welfare field, an additional responsibility of governments is to regulate the former to the extent necessary to insure conformity to minimum standards. This regulatory function is protective in character.

The greater part of the burden of furnishing assistance falls on public agencies, i.e., the federal, state, and local governments. Persons in need of relief include those who are unemployable because of mental or physical disabilities, those who are unable to support themselves because they are either too old or too young, and those who are unemployed or only partly employed through no fault or defect of their own. The relief problem is to

provide such persons and their dependents with food, clothing, shelter, fuel, and medical care. Opinions differ as to the proper way of doing this, and various policies are pursued. Whatever the form of relief, careful investigation of all applications for assistance is necessary in order to insure that relief is given only to persons who deserve it.

Certain other activities fall in the relief category even though some of them are in a sense remedial. *Public employment bureaus* are maintained to gather information about vacant jobs and to aid the unemployed in obtaining work. *Legal aid work* is carried on to provide legal advice and service for persons of limited means. Legal relief may have the consequence of obviating the necessity for providing the aided person with food, shelter or clothing. Another important service which welfare agencies render is *insurance adjustment*. Many a family needs advice concerning its insurance problems, especially if the breadwinner is unemployed or confined in some institution; and in many instances, too, insurance adjustments can be effected by disinterested experts in behalf of persons who, through ignorance, have been the victims of sharp business practices. The list of relief activities also includes the *provision of cemeteries* for the poor and the furnishing of aid in connection with *pauper funerals*.

A special relief problem is afforded by indigent transients. These must be provided with food and shelter, often in municipal lodging houses, and arrangements must be made for their transportation back home. The automobile has aggravated the transient problem by increasing the number of nomads who need relief and by making it necessary for municipalities to provide tourist camps and to supervise those maintained by private interests.

The preventive activities in the social welfare field are numerous and varied. Many of them pertain to children. Efforts are made to instruct parents in the proper care and discipline of youngsters, to effect improvement in home environment and family activities, and to promote and supervise various neighborhood programs in cooperation with the educational, recreational, and police agencies. The engagement of minors in street trades also is subjected to regulation. Other welfare work concerning children includes finding homes for them, supervising such homes, promoting child health, providing vocational training, and operating institutions like orphanages and reform schools.

Additional activities of the preventive type are vocational training for the deaf, the blind, and the crippled, the vocational re-training of persons whose former occupations have been outmoded by reason of industrial changes, and the establishment of informational and reference centers for veterans and displaced war workers. Much work also is done in relation to prisoners. In the case of those in the city jail or workhouse, assistance may be given by placing them in contact with attorneys, friends, and families; by helping with correspondence; by providing opportunities for rehabilitation; and by furnishing medical care. Another important phase of welfare work is associated with the probation and parole of persons convicted of



crime. Recommendations are made to the courts, and persons placed on either probation or parole are subjected to supervision and guidance by welfare employees.

Regulatory functions in the welfare field are undertaken for the protection of both the general public and the direct beneficiaries of welfare work. Their purpose is to secure observance of minimum standards and to prevent perpetration of various frauds. Private employment agencies need supervision in order to safeguard the interests of clients; the licensing of solicitors is a means of protecting the public against the solicitation of funds under false pretenses; and the licensing and supervision of privately-operated homes for children, the aged, the disabled and the like provides protection for inmates and for those who pay their expenses.

In closing this survey of social welfare activities, attention is directed to the need for coordinating the functions of the many agencies, public and private, which are active in the welfare field. Coordination of their work obviously is necessary if the resources of a community are to be used in the most effective manner. Numerous private welfare groups are ministering to the personal and social needs of distressed persons, and cooperation among them as well as with public agencies is essential to avoid duplication of effort, conflicting policies, neglect of some cases because of divided responsibility, and kindred evils.

**Housing.** The housing problem in general is one of providing adequate homes for all classes of the population at a cost which each class can afford. Solution of this problem requires the combined efforts of public and private agencies. On the whole, private enterprise has done a reasonably good job in furnishing fairly satisfactory homes for the upper, the middle, and the upper-middle income groups, but it has failed to provide good houses for the lowest income groups at prices which the latter are able to bear. As a consequence, many people of limited means live in dwellings which are unfit for human habitation. Although numerous persons seem unaware of the fact, the continuation of sub-standard living conditions for a substantial portion of the population constitutes a greater expense to a community than would assumption of the cost of remedying the situation.

Governmental activity in the housing field is primarily directed toward the goal of providing proper dwellings for the lowest income groups. Some of the worst abuses of private enterprise in this connection can be curtailed through regulation, but a more positive program of governmental action is needed to solve the problem under prevailing conditions. Unfortunately, building costs are so high in relation to the rent-paying capacity of many people that even the government is unable to build proper homes at a sufficiently low cost for the lowest income group, in spite of certain economic advantages connected with public projects, for instance, the borrowing of money at lower interest rates.

There are several ways of tackling the low-cost housing problem. For one thing, the government may give direct or indirect financial aid to private

organizations, such as non-profit associations or limited-dividend companies. Again, the plan pursued may be that of subsidizing needy tenants who rent from private owners. Finally, the government itself may undertake the construction and management of housing projects. Housing developments, whether under public or private auspices, must be properly located within the city and must meet the minimum standards considered desirable from the standpoint of health, safety, morality, and convenience. They should be managed carefully with respect to selection of tenants, collection of rentals, and proper maintenance. Experience has demonstrated that education of tenants is essential to realization of the ultimate objectives of a housing program.

Demolition of buildings unfit for dwelling purposes and the elimination of slums are aspects of the housing problem which are at once destructive and constructive. However, a prerequisite to the wiping out of slum areas is the provision of adequate quarters for their residents. Otherwise, the elimination of one slum area simply results in the growth of another in some other part of the city.

Greater attention has been paid to the housing problem during the last fifteen years than at any previous time in the history of the United States. Something has been accomplished in solving this problem, but far more remains to be done, and in the future, as at present, the federal, state, and local governments will all play a part in winning battles on the housing front.

#### CULTURAL FUNCTIONS

**Education.** Education has become one of the most important of all governmental functions, and for many years has accounted for a larger proportion of total local expenditures than any other governmental service. With rare exceptions, however, the general governments of cities have very little to do with the management and operation of schools. The prevailing policy in the United States is to incorporate school districts as distinct units of government which are entirely or largely independent of general city governments. Subject to the laws of the state and under the supervision and control of state educational agencies, the governing authorities of these school districts decide questions of educational policy, administer the school system, prepare the educational budget, and very often levy and collect the necessary taxes. In urban areas, the boundaries of the school district ordinarily coincide with those of the legal city, with the result that the two units of local government are serving the same population.

The relations between the school district and the city government vary considerably in the many instances in which the former lacks complete independence of the latter. Occasionally the members of the school board are appointed by the mayor or the council, or by the mayor with the approval of the council. Sometimes the mayor or a councilman is an *ex-officio* member of the board. In the field of finance, the law may require submission of the school budget to the appropriate city authority which is charged with the

duty of levying and collecting the needed taxes. Less frequently, the city may be empowered to reduce the total school budget or, in very few instances, to revise items in the budget. Title to school property is sometimes vested in the city, and the city also may have some authority over the selection of school sites. The issuance of bonds for school buildings is sometimes a responsibility of the city. Among other ways in which the city may be related to the school district are city custody of school funds and paying out of funds, city purchase of school supplies, the provision of legal services, and the furnishing of water, gas, and electricity. Generally speaking, relations of the type mentioned have proved of minor value as a means of enabling the city government to exercise control over education.

In the exceptional instances in which education is a function of the city government, the usual educational services are rendered to the public. Kindergartens, elementary, and secondary schools are invariably provided and junior colleges are becoming fairly common. A few cities have established municipal universities. In addition to the customary educational programs for children and youths, increasing attention is being given to adult education and to vocational training for various groups.

**Libraries, Museums, and Concerts.** The operation of libraries and museums and the giving of concerts are activities of an educational and recreational character which are carried on in urban areas by various agencies. In many communities private organizations predominate, whereas in others governmental agencies are largely, if not entirely, responsible for services of this type. However, even if the instrumentality be private, the city government is very likely to be an indirect participant in these activities.

Libraries provide books, periodicals, and newspapers for the general public. They also maintain a reference staff to furnish information on request, conduct classes for various groups, stage exhibits, provide facilities for and encourage the organization of discussion groups, sponsor lectures and promote the use of library facilities in various ways. Museums fall into three general categories, namely, art, natural history and historical. Their primary function is the collection and display of works or objects pertaining to the special objectives which have led to their establishment. They also may conduct classes, sponsor lectures, furnish assembly rooms and stage traveling exhibitions for the benefit of various groups. The musical activities of city governments include the maintenance of city bands, symphony orchestras, the promotion and direction of group singing, and the establishment of municipal operas. Municipal bands are fairly common, but only the larger cities are likely to undertake the other musical activities which have been mentioned.

Library service is a function of many municipalities, but the administration of museums by city governments is by no means common. Sometimes the school district rather than the city is the governmental unit for library administration. Libraries as well as museums often are operated by private corporations of one type or another, and under such circumstances the rôle

of the city government seldom extends beyond minority membership of the *ex-officio* type on the governing body, the provision of buildings, or the giving of financial support in some form. In some jurisdictions a special tax levy is earmarked for library or museum purposes; in others, city authorities appropriate money from the general fund for the use of the privately-managed libraries and museums.

**Parks and Recreation.** A very important function of city governments is to provide for the recreational needs of the inhabitants of urban areas. This service requires physical facilities of various types, the development of recreational programs, and the direction and supervision of a variety of recreational activities. The ideal to be striven for is the furnishing of recreational opportunities for all age groups and for all of the many classes of people comprising the city population, with greatest emphasis on the needs of those persons who are least able to contend successfully with the problem of recreation in an urban environment. Few urban communities have progressed very far toward attainment of this ideal.

The physical facilities for recreation in its various forms include parks, parkways, playgrounds, playfields, tennis courts, golf courses, swimming pools, skating rinks, stadia, field houses, and recreational buildings for indoor activities. All of these facilities should be properly located from the standpoint of accessibility for the people who are to be served thereby. City authorities sometimes boast about the percentage of land area devoted to parks, playfields, and playgrounds, without providing the much more significant information in regard to their number and distribution.

The provision and maintenance of the physical facilities for recreation is but one phase of the problem which confronts city officials. Equally important is the function of seeing that these facilities are properly used by as large a number of persons as possible. It is necessary to organize and supervise group play, to provide a program of activities, both indoor and outdoor, which will appeal to persons of different ages with different recreational interests, and to encourage widespread participation. Every effort should be made to provide the type of leadership which will produce the best results in the recreational field, not only through the effective and efficient performance of the various activities which have been mentioned, but also by obtaining the cooperation of all agencies, public and private, directly or indirectly concerned with recreational problems. Coordination of the efforts of recreational authorities, the police, the schools, and social welfare workers contributes materially to solution of the problem of juvenile delinquency.

#### PUBLIC WORKS AND UTILITIES

**Streets.** The street system of a city is as essential to its life as the circulatory system is to that of the human body. Movement from place to place within the city and to and from the city requires streets, and the efficiency with which movement takes place depends on the character of

the street system, the condition of streets, and the means of transportation which are in use. Solution of the various phases of the street problem is a major responsibility of city governments in all urban areas. Something will be said about street layouts in the subsequent discussion of city planning. Consequently, the following discussion of streets is confined to such matters as street construction and maintenance, sidewalks, and street lighting.

The proper paving of streets is an engineering problem which involves consideration of a variety of factors. For instance, the selection of an appropriate pavement for a particular street requires that attention be given to such matters as the location of the street, the present and future character and volume of traffic, and the relative merits of different pavements from the standpoint of durability, ease of maintenance and of cleaning, tractive resistance, noise, slipperiness, and both initial and maintenance costs. The construction of pavements may be undertaken by the city itself or by private contractors who bid successfully on paving projects. If the work be done by contract, city inspection is necessary to insure conformity to specifications. The task of maintaining streets in good condition usually is discharged by the city through its own maintenance force.

Sidewalk construction and maintenance is as important for pedestrian use of streets as the pavement of streets is for vehicles. In many communities the entire cost of sidewalks is borne by the owners of adjacent property; in some the cost is shared by the city and the owners, and in others the city foots the entire bill. Whatever the financial arrangements and whatever the rights and duties of property owners with respect to sidewalks, the city government bears the ultimate responsibility for the conditions which prevail.

Adequate street lighting is necessary for the safe movement of vehicular and pedestrian traffic, for the convenience of the general public, and for the protection of persons and property against criminal conduct. In business sections, the lighting of streets also is advantageous from the commercial standpoint. A satisfactory lighting system must achieve the aforesaid purposes. Since the lighting problem varies with the purpose and with the type of streets, the classification of streets and the establishment of the lighting requirements for each class are prerequisites to the provision of adequate lighting. The lighting of parks, public squares, playfields, playgrounds, and public buildings are other phases of public lighting which require the attention of city governments.

Additional responsibilities of city governments in relation to streets vary considerably in character. The control of street openings and excavations, regulation of the use of streets, the construction and maintenance of bridges and tunnels, the elimination of grade crossings, the naming or numbering of streets, the planting and care of trees and grass along streets, and the placement of fire hydrants, poles, and overhead wires need only be mentioned to demonstrate the point. Traffic regulation is another street problem which was discussed as a police function, and street cleaning will be given consideration in the following section.

**The Collection and Disposal of Wastes.** The collection and disposal of wastes in an urban community is a problem of major importance from the standpoint of health, convenience, and appearances. Street dirt, garbage, ashes, rubbish, and sewage are the wastes with which city governments are concerned. As a rule, waste collection and disposal is a municipal function, but in a good many instances private agencies render this service under agreements entered into with the city government. With rare exceptions, private effort in this field is confined to the collection and disposal of garbage, ashes, and rubbish.

Street dirt consists of dust, soot, and other fine material, bulky matter like paper, sticks, or leaves, and snow or ice. The methods and equipment used in cleaning streets are determined by a variety of factors, viz., the character and the quantity of street dirt, the character and condition of pavements, the nature and extent of traffic, and the financial resources of the city. *Machine brooming, flushing and hand sweeping* are the methods most commonly used. Snow and ice present a special problem. Street dirt other than snow is disposed of by dumping, by filling in low land, or by incineration.

Garbage, ashes, and rubbish may be collected separately, all together, or in various combinations, for example, garbage separately and ashes and rubbish together. Whether a separate or some combined system of collection is used depends primarily on the method of disposal of each type of waste and on the financial resources of the city. Garbage may be disposed of in various ways. These include incineration, feeding to hogs, the reduction process, grinding and discharging into sewers, the sanitary fill, and dumping. Ashes make excellent filling material and often are disposed of in this way. Otherwise they are dumped. Rubbish may be used for filling, be dumped, or be incinerated. Separate collection of garbage is necessary if it is to be used for feed, ground for discharge into sewers, or subjected to the reduction process for extraction of grease. Combined collection of all three of these wastes is feasible only if the method of disposal is by incineration or by dumping. With some disposal methods, for example, feeding garbage to hogs, a financial return is obtainable, but generally speaking the return is insufficient to cover the costs of both collection and disposal.

There are many questions to be settled in regard to the collection phase of the waste problem. One of them is the issue of municipal versus private collection. In many cities the municipal government does the collecting; in some, a private person or concern enters into a contract with the city and undertakes the task of collection; and in others, the city licenses a number of private collectors. Among other matters to be settled with respect to collections are the type of collecting equipment, the time of collection, the frequency of collection, and whether collection is to be made from the back yard or the curb. The total cost of collection depends on the cost of loading and hauling. These costs are affected by the policies pursued in regard to matters of the type mentioned above.

Sewage is the liquid waste of an urban community. It consists of: (1)

house sewage which is the liquid waste from residences, business buildings, institutions, and various manufacturing processes, and (2) storm sewage which is the water flowing off street surfaces, land, and roofs during rainstorms. The problem confronting municipal authorities is to collect sewage without delay and to dispose of it in a manner which will not create a nuisance or endanger public health.

The disposal of sewage is a troublesome problem because sewage must ultimately be discharged into some body of water and the pollution of lakes and streams contaminates water supplies, destroys fish, damages property, and creates offensive conditions detrimental to various other human interests. Avoidance of these evil consequences usually requires that sewage be treated before discharge into a body of water. Sewage treatment, which is not to be confused with sewage disposal, is the process of altering the nature of sewage before discharge so as to prevent the creation of a nuisance. After treatment, it still is necessary to dispose of the effluent and the sludge. There are various methods of treatment and the choice of a given method or combination of methods depends on local conditions.<sup>1</sup>

**Water Supply.** An adequate water supply is essential to city populations for several reasons. Health considerations are of first importance because such serious diseases as typhoid and cholera are water-borne; fire protection is partly a matter of water supply; and the cost of living is affected because the quality of water has a bearing on soap consumption, boiler scale, food preparation, and certain industrial processes. Moreover, the convenience of living is determined in many ways by the availability of a sufficient amount of water in places of residence and work. Since individual effort is inadequate to solution of the water problem in an urban environment, the city government must assume the responsibility of providing a proper supply either through public or private agencies.

To be rated as adequate, a water supply must be large enough in quantity and good enough in quality to satisfy the current and probable future needs of an urban population for domestic, commercial, and public purposes. In the selection of a source of supply, consideration has to be given to questions of quantity, quality, and cost. The ideal source is one which is nearby, adequate both in quantity and quality, and at an elevation high enough to permit distribution by gravity. Least desirable is a distant source of poor quality at so low an elevation that pumping is necessary. Few cities are fortunate enough to have access to an ideal source.

Waterworks of various types are required for the collection of water, for bringing it to the city, and for its eventual distribution to homes and places of business. Most cities, too, have to construct water purification plants because the raw water at the source lacks the proper quality.

Purification is the process of rendering water fit for consumption. The

<sup>1</sup> Among the various treatment methods are straining, plain sedimentation, chemical precipitation, septic tanks, Imhoff tanks, the activated sludge process, contact filters, sprinkling filters, and fine grain filtration. The effluent from the treatment process is discharged into a body of water; the sludge, after being dried, may be burned, used to fill low land, or used as a fertilizer.

objectives to be achieved when water is utilized for domestic and manufacturing purposes are elimination of the danger to health from pathogenic organisms, improvement in the taste and appearance of water, and removal of undesirable chemicals. Methods for the removal of suspended impurities include plain sedimentation, sedimentation with the addition of a coagulant, slow sand filtration, and rapid sand filtration. Dissolved impurities are removed through appropriate water softening processes. In many cities, bacteria-destroying chemicals like hypochlorite of lime are used to sterilize water before delivery to consumers. Sterilization is an adjunct to, rather than a substitute for, other methods of purification.

**Municipally-Owned and Operated Utilities.** In the United States practically all sewerage systems are municipally-owned and operated. Water supply and/or distribution systems which are city-owned and administered out-number those controlled by private interests in the ratio of about three to one. Municipal markets also are a very common form of public undertaking. In the case of other utilities, however, private enterprise predominates.

The number of municipal electric light and power plants and/or distribution systems is fairly large. In 1947, for cities with a population over 5,000, the proportion of those owning and operating various utilities other than water supply and sewerage systems was as follows: electric generation and/or distribution systems, 21.4%; auditoriums, 18.4%; airports, 17.7%; gas manufacturing and/or distribution, 4.3%; port facilities, 4%; slaughterhouses, 2.4%; bus or trolley bus systems, 2%; and street railways, 0.1%.<sup>2</sup> Among other enterprises which are occasionally undertaken by cities in the United States are fuel yards, ice plants, printing establishments, theaters, asphalt plants, laundries, liquor stores, broadcasting stations, telephone systems, heating systems, ferries, baths, forests, and milk supply distribution.

Private ownership and operation of utilities serving urban populations involves various regulatory problems with which city governments are concerned in one way or another. For the most part, utility regulation in the public interest has become a function of the federal and state governments. Nevertheless, the rôle of the city government is by no means negligible. Even though ultimate control of rates and service standards may rest with a state utilities commission or with the Federal Power Commission or Federal Communications Commission, city authorities serve as watchdogs over privately-owned utilities and bear the responsibility of representing the urban community before the appropriate commission in the frequent conflicts of interest between utilities and consumers.

Moreover, the granting of franchises and the negotiation of contracts continue to be important functions of the city government with respect to private utilities. The terms of the franchise relate to such matters as the

<sup>2</sup> *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), p. 49, Table 10.



conditions under which the utility may use city streets, service standards, rates, accounting methods, reports, and the length of time for which the franchise is granted. State legislation determines the respective spheres of authority of state and local agencies in relation to utilities.

### CITY PLANNING AND ZONING

**City Planning.** City planning is the art of directing the physical growth of cities in such a way as to create the environmental conditions most conducive to promotion of the social and economic welfare of urban populations. The major purposes of city planning are: (1) to achieve economy in time, effort, and the use of human and physical resources; (2) to promote social and individual welfare by creating environmental conditions which contribute to better health, morals, and morale, and (3) to provide pleasant, if not beautiful, surroundings. In a broader sense of the phrase, city planning extends to every phase of city life, non-physical as well as physical, but the narrower definition which has been given accurately describes city planning as a function of city government distinguishable from the planning in which all city departments, police, fire, health, social welfare and the like, should engage in carrying on their sundry activities.

The physical aspects of cities falling within the scope of city planning are: (1) transportation facilities; (2) the street system; (3) park and recreational facilities; (4) public and semi-public buildings; (5) public utilities; (6) housing sites, and (7) land use and building regulation. Non-physical phases of city planning include the problem of obtaining the legal authority necessary to make planning effective as well as the all-important matter of financing the various construction projects which execution of a city plan involves.

The transportation problem covers movement of persons and goods within the city and to and from the city. Adequate provision must be made for the facilities necessary to permit effective and economical transportation by land, by water, and by air. The proper location of railroad entries and terminals, street railway lines, subways, bus routes, airports, and docks and piers is part of the task of city planners. Coordination of these facilities is particularly important. Another phase of the problem is that of automobile traffic and automobile parking spaces. In all of these matters, the street system is involved in one way or another.

Street plans of cities usually conform to one of two basic patterns, the rectangular or the radial, but in many instances a given plan represents a combination of these two types. The task of city planning authorities is to design the best possible street system in the light of existing arrangements, topographical features, and the needs of the city as a whole with respect to internal movement and connection with the outside world. Among the many matters which have to be considered in street planning are intersections; proper width of roadway and sidewalks; grade crossings; street grades; and setback restrictions for adjacent buildings.

The importance of proper location of parks, playgrounds, playfields, and other recreational facilities was referred to previously in another connection. Reserving land for these purposes and locating these facilities in relation to the population to be served and to the street and transportation systems are city planning problems which are often difficult to solve.

In regard to public and semi-public buildings, planning is necessary to insure proper location and adequate sites. Public buildings are those which are used for governmental purposes (national, state, county, or municipal). Examples are city halls, county court houses, federal postoffices, police and fire stations, libraries and schools. Semi-public buildings are private buildings which are devoted to public service, such as railway stations, theatres, hospitals, museums and churches. Some buildings, by reason of the use to which they are devoted, require a central location; others need to be located in different sections or neighborhoods of the city. Consideration always should be given to such questions as accessibility and the desirability of grouping buildings or providing separate locations.

Other phases of city planning are public utilities, housing, and zoning. Zoning will be discussed in the section which follows. The consideration of public utilities in connection with city planning is due to the necessity of insuring their development and expansion in conformity with the planned physical growth of the city. As far as housing is concerned, the primary city planning problem is to provide properly located sites of adequate size and to coordinate all aspects of the housing problem, slum clearance as well as the provision of new dwellings and the reconditioning of old ones. Housing sites should be located with reference to the places of work and play of the occupants, and every effort should be made to promote housing developments which will form an integral and harmonious part of the city plan.

City planning is a function that received little attention in the United States prior to the twentieth century. Consequently, most cities have grown more or less haphazardly, and the chief practical results of city planning are correction of the worst mistakes of the past and control of future developments. Growing cities soon expand beyond their legal boundaries and control of developments in areas outside the city limits generally presents some difficult legal problems. The need for regional planning is obviously great. Fortunately, progress is gradually being made along these lines.

**Zoning.** Zoning, as a widespread activity of city governments in the United States, is a twentieth century development which dates back about 30 years to the passage of the first comprehensive zoning ordinance by New York City in 1915. The essence of zoning is the division of a city into districts which are subject to different regulations concerning the use of land and the use, size, and arrangement of buildings. Its purpose is to direct urban growth and development in such a way as best to promote the safety, health, and general welfare of the community. By regulating land and buildings in the manner indicated, zoning serves as a means of coordinating and giving effect to the various parts of a city plan.

Zoning ordinances establish use, height and area districts so as to restrict the use of land in different parts of a city to the purposes for which it is best suited and so as to limit the use, height, and area of buildings in such a way as to insure adequate light and air and to prevent over-crowding, over-concentration of population, fire hazards, and traffic congestion and hazards. The basic use districts are industrial, commercial or business, and residential. Area and height regulations deal specifically with such matters as the percentage of land area which buildings may occupy, the setback of buildings from the street line, side and back yard space, and maximum permissible height in relation to setbacks and street widths.

Zoning ordinances should be comprehensive and reasonable in their provisions and include arrangements for appeals by property owners in doubtful cases. A board of zoning appeals is the usual agency for this purpose. Zoning is an exercise of the police power which the courts have held to be constitutional if the restrictions established are reasonable and if the rights of property owners are safeguarded by adequate procedural arrangements.

#### AUXILIARY FUNCTIONS

All of the municipal functions so far discussed are performed by city governments for the direct benefit of the people. These direct public services constitute the reasons why city governments are organized. Their rendition, however, necessitates the carrying on of many other activities by city officials. These derivative activities are appropriately labeled "auxiliary functions." Among the more important of them are personnel administration, budgeting, accounting, the purchase of supplies and materials, legal services, the maintenance of public buildings, the care of equipment, the assessment of property for taxation, the collection of revenues, and the borrowing of money.

Obviously, no government exists simply to hire and fire men, to keep accounts, or to collect revenues, even though the conduct of some politicians may provide ground for a contrary opinion. The hiring of men and the keeping of accounts are merely means to an end, i.e., rendition of the direct public services which have been described so briefly in the preceding pages.

Problems of municipal finance and personnel administration will be discussed at some length in subsequent chapters, but it is not within the province of this book to give consideration to other auxiliary functions. Suffice it to say that the effective and economical rendition of the direct public services depends in large measure upon the skill with which the auxiliary functions are organized and discharged. Although the latter are secondary activities from the standpoint of purpose, they are of primary importance as a means of achieving a maximum of good governmental service at a reasonable cost.

**Conclusion.** The foregoing survey of municipal functions merely scratched the surface of a highly technical subject. Enough has been said,

however, to give the student some conception of the character of the problems which confront the policy-determining and administrative authorities of a city government, and such knowledge may contribute to a better appreciation of many of the subjects discussed at length in this text. The type of services which city governments usually render has a bearing, for example, on the municipal home rule controversy, the question of state administrative control of city governments, and the powers and liabilities of municipal corporations. It is well, too, to keep functions in mind in considering the claimed advantages and disadvantages of each of the basic forms of city government, namely, the mayor-council, the commission, and the council-manager plans. Directly or indirectly, and in one way or another, what city governments do bears a relationship to many problems of organization, procedure, and city-state relations.

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## CHAPTER III

### THE CITY AS A MUNICIPAL CORPORATION

#### *Outline*

The Nature of Corporations in General

Public and Private Corporations

Distinction Between Municipal Corporations and Quasi-Corporations

Attributes of Municipal Corporations

(1) Population and Territory

(2) The Charter

(3) Name

(4) Summary of Attributes of a Municipal Corporation

Advantages of the Corporate Form of Organization for Cities

The Creation and Dissolution of Municipal Corporations

(1) Methods of Creation

(2) Methods of Dissolution

FOR GOVERNMENTAL purposes, cities are organized as municipal corporations with definite territorial boundaries. An understanding of many of the problems of city government requires knowledge of the nature of municipal corporations, the controlling principles of law concerning their powers and responsibilities, and the character of their relations to the state.

What appears to be a single urban area from the standpoint of social and economic fact often includes more than one city in the political-legal sense. Frequently, too, portions of the city as a social entity extend beyond the territorial limits which are established for governmental purposes, and sometimes the city as a municipal corporation comprises territory of a distinctly rural character. Rarely do the boundaries of the legal and the social city coincide. The ill-defined limits of the social city shift continuously, whereas the boundaries of the legal city are difficult to alter. Changes in the latter can be accomplished only in accordance with formal legal procedures which in themselves involve delay even if effective opposition to alteration fails to develop.

#### THE NATURE OF CORPORATIONS IN GENERAL

A corporation is an association of individuals or groups of individuals to which the law attributes a single legal personality. This juristic person, which is a bearer of rights and duties under the law, leads a legal existence distinct from that of the individuals who are its members. The legal consequences of this state of affairs are significant. Debts incurred by a corporation must be paid out of the corporate assets rather than by individual

members. Property is acquired, held, and disposed of in the corporate name, and the contractual rights and obligations of the corporation are distinguished from those of the persons composing it. In legal controversies, an action brought by or against the corporation cannot be maintained by or against its members individually.

Duration of the life of a corporation in no way depends on the life span of the persons who happen to be its members. Nor do changes in membership have any effect on its legal existence. These features of corporations, viz., continuous legal identity and perpetual succession under a special name, permit permanent provision to be made for the attainment of some desired end without dependence on the continuous membership, support, or life of any particular individual or group. The corporation, as a separate legal entity existing in the contemplation of law, lives a legal life which is entirely its own.

In the famous case of *Dartmouth College v. Woodward*,<sup>1</sup> John Marshall described the characteristics and advantages of the corporate form of organization as follows:

Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best to effect the object for which it was created. Among the most important are immortality; and if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property without the perplexing intricacies, the hazardous and endless necessity of perpetual conveyances for the purpose of transmitting from hand to hand. It is chiefly for the purpose of clothing bodies of men in succession with those qualities and capacities that corporations were invented and are in use. By these means a perpetual succession of individuals are capable of acting for the promotion of the particular object like one immortal being.

A corporation is thus a legal device for conferring on the individuals of which it is composed powers, privileges, and immunities which they otherwise would not possess.

The elements of a corporation are: (1) lawful authority of incorporation; (2) the persons to be incorporated, either natural persons or bodies corporate and politic; (3) the name by which they are incorporated; (4) the place, for without a place no incorporation can be made, and (5) by words sufficient in law.<sup>2</sup> It also is well established that a corporation enjoys certain incidental powers. Among them, in addition to the right of perpetual succession, are authority to sue and be sued, to grant or receive in the corporate name, to purchase and hold lands, to have a common seal, to remove members and to make by-laws for the better government of the corporation. The foregoing are the recognized common law powers of a corporation.

<sup>1</sup> 4 Wheaton 618, at 638, 4 L. Ed. 629 (1819).

<sup>2</sup> E. McQuillin, *The Law of Municipal Corporations*, 2nd ed. (Chicago, Callaghan & Co., 1928), Vol. 1, sec. 123, p. 361.

## PUBLIC AND PRIVATE CORPORATIONS

Corporations are either public or private in character. There are several significant differences between these two types.

The purpose of a private corporation is the attainment of an objective which is described as private because the corporate members pursue it in their own special interest as distinguished from that of the general public. Frequently the profit-making motive is dominant, but such is not the case with private corporations which are organized for scientific, religious, or philanthropic purposes.

The public character of a corporation arises from the fact that the state or public has an *exclusive* interest in it. This feature is the distinctive attribute of public corporations. They are created for the specific purpose of functioning as governmental agencies. The *entire* interest in such corporation is *in the public* and the authority exercised by them is definitely governmental in character. Counties, townships, school districts, and cities fall in the public corporation category. These and other units of local government in the United States are given corporate status to enable them more effectually to exercise their powers and to discharge their duties.

The type of service which a corporation renders is not determinative of its public or private character. Frequently, public and private corporations discharge the same functions. Corporations which furnish a community with such important and necessary services as power and light, water or transportation nevertheless are private in variety if non-governmental in character and organized for the pecuniary advantage of their members. Although affected with a public interest, privately-owned and operated utilities serve a private purpose which is paramount.

The distinction between public and private corporations is presented clearly in the following quotation from the opinion of the Supreme Court of New Jersey in *Ten Eyck v. Canal Co.*<sup>3</sup>

Public corporations are political corporations, or such as are formed wholly for public purposes, and the whole interest of which is in the public. The fact of the public having an interest in the works or the property or the object of a corporation does not make it a public corporation. All corporations, whether public or private, are, in contemplation of law, founded upon the principle that they will promote the interest or convenience of the public. A bank is a private corporation, yet it is, in the eye of the law, designed for public benefit. A turnpike or a canal company is a private company, yet the public have an interest in the use of their works, subject to such tolls and restrictions as the charter has imposed. The interest, therefore, which the public may have in the property or in the objects of a corporation, whether direct or incidental (*unless it has the whole interest*),<sup>4</sup> does not determine its character as a public or private corporation.

A second point of difference between public and private corporations is that charters of the latter constitute contracts between the individual members thereof and between the state and the corporations, whereas the relations established in the creation of public corporations are strictly

<sup>3</sup> 18 N. J. L. 200.

<sup>4</sup> The italics are the author's.

non-contractual in character. In 1819, the Supreme Court of the United States ruled that the charter of a private corporation falls under the protection of the clause in the Constitution of the United States which prohibits the states from passing laws impairing the obligation of contracts.<sup>5</sup> This decision, which has been adhered to ever since, has had far reaching effects on the power of states to control private corporations.

In holding that public corporations are not the result of contract, the courts have stressed their nature as agencies of civil government. The political powers conferred on them are not vested rights as against the state which lacks authority to divest itself of its essential governmental power by contract. To hold otherwise would be contrary to sound public policy. The utility of the public corporation as an instrument of government would be destroyed.

Two other differences between public and private corporations are closely associated with the non-contractual status of the former and the contractual character of the latter. A public corporation may be created and abolished by the state without regard for the wishes of the persons incorporated. Private corporations result from the voluntary acceptance of a charter or incorporating act, and, once assent has been given, the state cannot withdraw or alter the terms of its grant unless the right to do so was reserved at the time of incorporation. Since the creation of a public corporation often is made to depend on the initiative and approval of the inhabitants of the place to be incorporated, the process appears to be voluntary. However, the procedure which a state chooses to follow for reasons of expediency in no way restricts its authority to provide otherwise if it so desires.

Finally, due to its non-contractual and involuntary features, the public corporation is subject to more extensive control by the state than is the private corporation. The latter enjoys the benefits of many of the rights which the Constitution of the United States guarantees to individuals. Although state control over public corporations falls short of being absolute, as will be shown in a following chapter, the restraints are relatively slight and of little practical significance under ordinary circumstances.

#### DISTINCTION BETWEEN MUNICIPAL CORPORATIONS AND QUASI-CORPORATIONS

In the field of local government, public corporations are of two general types, municipal corporations and quasi-corporations. A municipal corporation is the body politic and corporate constituted by the incorporation of the inhabitants of a place, usually an urban area, for the purpose of local self-government. To this end it is granted subordinate powers of legislation and regulation which enable it to deal with such problems as arise from the conditions peculiar to the community incorporated. It also serves as an agency of the state for the local administration of state-wide policies.

<sup>5</sup> *Dartmouth College v. Woodward*, 4 Wheaton 618 (1819).



The distinguishing feature of the municipal corporation is its rôle as an organ for the satisfaction of local needs. It is created primarily to promote the interests and to contribute to the convenience of the inhabitants of a locality by establishing the right and the power of local self-government. Cities, villages, towns, and boroughs are organized for governmental purposes as municipal corporations.

Counties, townships, school districts, sanitary districts and the like are public corporations which possess a more limited number of corporate powers. Consequently, their rating in the scale of corporate existence is low and they generally are referred to as quasi-corporations. The paramount reason for their existence is to act as agencies of the state in the administration of policies of state rather than local concern. These quasi-corporations deal with local problems, if at all, only on a relatively limited scale and in varying degrees.

The general distinctions just drawn between municipal and quasi-corporations are supported by the weight of judicial authority. However, anyone who investigates this subject in each of the 48 states will discover lack of uniformity in definitions and a variety of constructions placed on the same words and phrases in different constitutional and statutory provisions, not only as between states, but within any given state. Courts and legislatures use such terms rather loosely. The interpretation placed on a term in a given constitutional or statutory clause depends on the application of general principles of interpretation in the light of apparent legislative intent, particular circumstances, prevailing public policy, the trend of judicial decision, and established tradition.

#### ATTRIBUTES OF MUNICIPAL CORPORATIONS

(1) **Population and Territory.** A municipal corporation possesses the usual attributes of corporations in general, as set forth in a preceding paragraph, but differs from many of them in having a distinctly territorial character. Both population and territory are essential elements. The territorial feature is significant because the powers of a municipal corporation ordinarily may be exercised only within the limits of its prescribed boundaries. Moreover, the inhabitants of this area are the members of the corporation.<sup>6</sup> Membership is involuntary, except, of course, that a person is free to change his residence and depart from the limits of the municipality.

The accurate specification of boundaries is a matter of major importance, so important, in fact, that incorporations have been declared void for failure to describe territorial limits with certainty. Courts have held that without boundaries municipal corporations do not exist. To know where authority begins and ends, territorially speaking, is to know which persons and property are subject to regulation by municipal officials.

Changes in the corporate limits of municipalities may be brought about only at the time, in the manner, and under the conditions established by

<sup>6</sup> The usual status of the governing bodies, officers, and employees of the municipal corporation is that of agents who are legally authorized to act in its name.

law. Except in so far as its power may be restricted by constitutional provision, the legislature of a state may exercise full discretion in these matters. Unless prohibited from so doing, it may force territorial changes even in the face of opposition on the part of the inhabitants and authorities of the affected areas. This sometimes has occurred.

However, the policy of most states in recent decades has been to prescribe a procedure by general law under which the local council, property owners, or the voters are given a voice in annexation, consolidation, and detachment proceedings during the initial and/or final stages of the process. Final action depends on a favorable popular vote in slightly over half of the states, whereas in most of the others the decision rests with the council, a court, or the county board. The details of procedure often vary with the type of territory, e.g., platted or unplatted, and the type of action, viz., annexation, consolidation, or detachment. In ten of the states the only way of effecting territorial changes is through special act of the state legislature.<sup>7</sup>

(2) **The Charter.** The powers and duties of a municipal corporation attach to it in its corporate capacity. These, together with the details of its organization, are for the most part enumerated in a charter which is considered an indispensable element of every municipal corporation.

A charter may be defined as a written instrument in the nature of a grant which defines and limits the powers and objects of the corporation and prescribes its form of organization. Many charters assume the form of a single legal document, but some consist of a collection of laws or portions of laws applicable to a certain city or to a class of cities. Thus the charter of each of the 46 third class cities of Pennsylvania is composed of the general code applicable to third class cities and any other laws pertaining to their organization, powers, and duties. Few municipal corporations operate under charters which consist solely of a single legal document formally designated as such. Consequently, it is more accurate to define a municipal charter as consisting of the creative act and all other laws, constitutional or statutory, under which a municipal corporation functions.

Charters vary greatly in content, style, and arrangement, but in spite of marked diversity in these matters most of them contain provisions pertaining to the same general topics. Among the subjects normally dealt with in a charter are the following: name and boundaries; powers and duties of the municipal corporation and its officers; nominations and elections; the plan of government; the selection and removal of officers and employees; financial matters, including budgeting, accounting, purchasing, the letting of contracts, taxation, special assessments, and indebtedness; and relations with public service corporations. Many charters deal with these and other topics in great detail, whereas some include only the more basic provisions and permit detailed arrangements to be supplied by ordinance at the discretion of the city council.

<sup>7</sup> For details by states see A. Fuller, *Changes in Municipal Boundaries Through Annexation, Detachment, and Consolidation* (Chicago, The American Municipal Association, 1939), Report No. 127.

The charter of a municipal corporation is a law rather than a contract and, like any other law, is subject to alteration and repeal by the proper authorities. Methods of providing and changing charters will be discussed in a subsequent chapter. Being a law, a charter becomes effective without "acceptance" by the incorporated inhabitants of a locality, unless acceptance is provided for by constitutional or statutory provision as a matter of expediency in deference to public sentiment.

Since the organization, powers, and duties of a municipal corporation are determined by its charter, a charter sometimes is referred to as an organic law comparable to the constitution of a state or the Constitution of the United States. The analogy is unobjectionable except that it may create the false impression that municipal charters and constitutions are identical in nature. There are important differences between the two.<sup>8</sup>

(3) **Name.** At the time of its creation, a municipal corporation ordinarily is named by a clause in its charter or other formal act of incorporation to the effect that the inhabitants of the prescribed place "shall be a body politic and corporate by the name and style of the 'City of . . .'" Sometimes, instead of being conferred expressly or by implication in the incorporating act, the name is acquired by usage or reputation.

Whatever the mode of acquisition, a corporate name is indispensable because it constitutes the chief means of effecting the perpetual succession of many persons as one and the same corporate personality. A name once acquired may be changed by the corporation only in pursuance of authority granted by law and in accordance with prescribed procedure. Although it may be known and designated by several names, the corporation may have but one legal name. This name should be used in actions brought by or against it. A change in name, if accomplished in a legal manner, neither dissolves the corporation nor disturbs its rights and duties.

(4) **Summary of the Attributes of a Municipal Corporation.** The foregoing discussion of the nature of municipal corporations may be summarized by enumerating the elements of a municipal corporation as listed by McQuillin.<sup>9</sup> These elements are: (1) a legal creation or incorporation, duly authorized by the sovereign power, evidenced by a charter containing the corporate powers; (2) a corporate name by which the artificial personality or legal entity is known and in which all corporate acts are done; (3) inhabitants constituting the population who are invested with the political and corporate powers, which are executed through duly constituted officers and agents, and (4) a place or territory within which the local civil government and corporate functions are exercised.

<sup>8</sup>Strictly speaking, a constitution is the basic and supreme law of an independently organized and functioning body politic. A municipal charter is either the act of an authority external to the community to which it applies, or is drawn up and adopted by the locality by reason of permission which has been granted and may be withdrawn by an external authority. A charter serves as a legal yardstick only for the acts of the local authorities which it creates. It must conform to the Constitution and laws of the United States and of the state within which the municipality is located.

<sup>9</sup>*Op. cit.*, Vol. I, sec. 142, p. 412.

## ADVANTAGES OF THE CORPORATE FORM OF ORGANIZATION FOR CITIES

The corporate form of organization for the purposes of municipal government undoubtedly is advantageous from the standpoint of both the citizen and the state. Unity, stability, and a fixed and continuous responsibility are imparted to the collective enterprises of successive generations of individuals.

The incorporated urban area acts as a unit. Perpetual conveyances of property and other rights from one group of persons to another are avoided. The corporation's privileges and responsibilities, being distinct from those of its inhabitants and the persons who act as its officers, are unaffected by their personal experiences, whether fortunate or unfortunate. Individuals who transact business with an incorporated community are dealing with a single legal person possessing rights and obligations which remain unaltered in spite of changes in the territory and population of the incorporated area or in the personnel of the corporate authorities. For example, a person who has purchased a municipal bond may rest assured in the normal course of events that the principal and interest will be unimpaired because of changes of this type. Nor will his investment be endangered by reason of the replacement of one form of government by another of a different kind or because control of the city government shifts from one political party to another.

## THE CREATION AND DISSOLUTION OF MUNICIPAL CORPORATIONS

From the legal standpoint, municipal corporations are creatures of the state. The latter may pursue whatever policies it deems expedient in the matter of their creation, modification and dissolution, subject only to the restraint that in so doing no action may be taken contrary to the Constitution of the United States. The extent to which the states as bodies politic are limited by the national constitution in exercising control over municipal corporations is a question which will be discussed in a later chapter. It may be noted at this point that the limitations are indirect in character.

Ordinarily, the policies of the several states with respect to the creation and dissolution of municipal corporations are determined by their respective legislatures. Abuses of the plenary power which the state legislatures possessed in the early period of United States history brought about the insertion of various restrictions on legislative discretion in practically all state constitutions. On the whole, however, legislative authority pertaining to the creation and dissolution of municipal corporations is broad in scope.

A common constitutional requirement is that the incorporation of municipalities shall be accomplished in conformity with the terms of a general law rather than by special act. The details of procedure and the conditions warranting incorporation usually are left to the judgment of the legislature. Some state constitutions contain provisions specifying the number and basis of the classes of cities which may be created, stipulating the minimum population of incorporated communities, prohibiting the legislature from

creating new municipal corporations out of parts of existing ones, or requiring a popular vote on the question of incorporation or dissolution. Frequently, too, the legislature is denied authority to confer certain powers on municipal corporations or to create them without imposing restrictions on taxation and indebtedness.

(1) **Methods of Creation.** The methods of incorporating municipalities vary in detail from state to state. Only a general description of typical procedures will be given.

A special act incorporating the inhabitants of a previously unincorporated place still may be passed by the legislatures of a minority of the states. If this mode of incorporation be utilized, the special act creating and naming the body politic and corporate ordinarily prescribes its form of organization and defines its powers and duties. The act of incorporation thus constitutes the city's charter.

In most states the legislature is required to provide for the incorporation of cities and villages by general law. The specific procedure leading to formal incorporation is not necessarily associated with any particular method of providing a charter. Thus the steps involved in incorporation for the first time may be the same whether the charter is an act of the legislature or an instrument drafted and adopted by duly authorized local authorities. The method of providing a charter, which accounts for the distinction between special act, general law, optional law, or home rule charters, is distinguishable from the procedure by which a municipal corporation is created. In the case of creation by special act, the two processes are merged into one.

If incorporation is achieved under a general law rather than by special act, the first step in the process usually is the filing of an application or petition affirming the desire to be incorporated, describing the proposed boundaries, and asserting the existence of the conditions which are prescribed by law as a prerequisite to incorporation. These conditions commonly pertain to the size of the area and the prevailing use to which land therein is devoted, to the permissible proximity to existing corporations, to the necessary taxable wealth, and to the minimum size and density of population. The petition must be signed by not less than a specified number of qualified voters, taxpayers, or freeholders who reside within the area. It must be addressed to the court, officer, or other public body to which it is to be presented.

The second step is to give due publicity to the subsequent proceedings. These normally include either a public hearing or a popular election on the question of incorporation.

If a hearing be required as the third step, it is held by a court, a county board of commissioners, or some other agency designated by law. Although the legislature cannot delegate its power to create municipal corporations to other agencies of government, it may authorize some public body, for instance a court, to determine whether or not there has been substantial

compliance with all statutory requirements. Hearings are held for this purpose. If the findings are favorable, an order of incorporation is issued.

The more common third step is to hold an election rather than a hearing. In that event, the decision as to incorporation rests with a majority of the voters of the district concerned. Proclamation of the result of the election completes the process.

Municipal corporations usually are created either by special act or by observance of the procedure and fulfillment of the conditions established by general laws. In some instances, however, they have been held to originate by implication, and, in others, by prescription.

Creation by implication is recognized by the courts because the existence of a municipal corporation is primarily a matter of legislative intention. Sometimes a community, without having been expressly incorporated, may be functioning as a *de facto* corporation. In that event, the legislature may deal with it in such a manner as to warrant the conclusion that in the legislature's opinion it possesses corporate status. For example, if the inhabitants of a place are granted powers which can be exercised only by a corporate body, the action of the legislature in making the grant justifies the inference that a municipal corporation exists. Similarly, if the legislature refers to a place as a corporation and repeatedly recognizes it as such in one way or another, inquiry into its original organization as a corporation is precluded.

A municipal corporation is said to exist by prescription if the exercise of corporate powers by the inhabitants of a place has been acquiesced in over a long period of time by the general public and never has been challenged by the state. It is necessary, however, that there be legislation under which the community might have been incorporated. Although no charter or act of incorporation is discovered, corporate existence may be proved by reputation and evidence of the long continued use of corporate organization and powers. Under such circumstances, at least, the courts are inclined to presume a legitimate creation, especially so if the state has failed to challenge or question the existence of the corporation in appropriate proceedings. In instances in which corporate existence is claimed by prescription, each case must be decided on its merits in the light of all pertinent evidence. No general statement can be made regarding the precise length of the period or the character of the evidence necessary to establish existence by usage and public acquiescence.

In *The People of the State of Illinois ex rel. Selah Gridley v. Lucius Farnham et al.*,<sup>10</sup> the court was called on to decide whether the town of Newark ever was legally incorporated. The evidence showed that the inhabitants of the village had elected trustees in 1849 and that these trustees had since exercised all of the functions pertaining to a lawfully incorporated town; that, except in one year, annual elections had been held; and that an effort had been made to organize under the general law of the state authorizing towns to be incorporated. An act of the Illinois

<sup>10</sup> 35 Ill. 562 (1864).

legislature, passed in 1857, had referred to Newark as incorporated and also had conferred additional powers on its officers. The court held that this enactment precluded all inquiry into the regularity of the town's original organization. This case affords an excellent example of creation by implication.

In the case of *Robie v. Sedgwick and Hardenbrook*,<sup>11</sup> a school district was held to have corporate status on the basis of evidence showing that the usual powers pertaining to school districts had been exercised for a period of over forty years. The court decided that although no record of the original organization of the district could be found, the evidence was sufficient to raise the presumption that the district had been duly organized at an early day after such organizations were authorized by law.

(2) **Methods of Dissolution.** The dissolution of municipal corporations, like their creation, normally takes place in accordance with the procedural stipulations of general laws or by special act of the legislature in those few states in which special legislation on this matter remains unprohibited by constitutional provision. In the absence of constitutional restrictions, the life and death power of the state over municipalities may be exercised by its legislature.

The dissolution of a municipal corporation usually may be ordered by a competent tribunal or accomplished by a favorable popular vote on the question. As a rule, the initial step in the process is the presentation of a petition signed by a certain number of qualified persons who reside in the community which is to be dissolved. The next major step involves either: (1) a hearing by a court or other public body authorized to decide whether the statutory conditions warranting dissolution exist, or (2) an election at which the question of dissolution is submitted to the voters of the community for their decision. In many states, proceedings for dissolution may be instituted by a duly authorized state officer, e.g., the attorney-general, before a court which possesses authority to issue orders of dissolution under conditions stipulated by statute.

Dissolution also may be effected in other ways. Among them are express abolition by special act and repeal of the charter of a municipal corporation without providing another. Other circumstances under which dissolution occurs include annexation of the entire territory of one municipality to another and the consolidation of two or more municipal corporations to form a new one.

Many types of changes pertaining to municipal corporations have no adverse effect on their continued existence. The life of a municipality as a legal person continues despite increases or decreases in population; the addition or partial loss of territory; charter amendments; the adoption of a new charter; a shift from one class to another as provided by law under a system of classification of cities; or the substitution of one form of government for another, such as replacing a mayor-council with a council-manager plan.

<sup>11</sup> 35 Barbour 319 (New York, 1861).

It also is well established, in the absence of statutory provision to the contrary, that dissolution fails to occur because of failure to elect officers or by reason of the fact that granted powers have not been exercised either in whole or in part. Nor does mismanagement of the affairs of a municipality through neglect, abuse of power, or the exercise of poor judgment terminate its corporate existence. However, circumstances of this type might constitute the occasion for resorting to one or another of the permissible modes of dissolution.

If a dissolution takes place, arrangements almost always are made for winding up the affairs of the extinct corporation. The steps which need to be taken will be discussed in a succeeding chapter on the subject of city-state relations.

### *Suggested Reading*

J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed. (Boston, Little, Brown, & Co., 1911), Vol. I, Chapters III, IX, X.

C. B. Elliott, *The Principles of the Law of Municipal Corporations*, 3rd ed. (Chicago, Callaghan & Co., 1925), Chapters I-II.

C. M. Kneier, *Illustrative Materials in Municipal Government and Administration* (New York, Harper & Brothers, 1939), Chapter I.

E. McQuillin, *The Law of Municipal Corporations*, 2nd ed. (Chicago, Callaghan & Co., 1928), Vol. I, Chapters 2, 3, 7-9.

W. B. Munro, "The City As A Municipal Corporation," *Public Management*, Vol. II, September, 1929, pp. 577-580.

J. D. Robb, "The Effect of the Alteration or Abolition of a Municipal Corporation Upon Its Debts," *Minnesota Law Review*, Vol. 7, April, 1923, pp. 388-391.

M. Seasongood, *Cases on Municipal Corporations* (Chicago, Callaghan & Co., 1934), Chapter I.

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C. W. Tooke, "The Status of the Municipal Corporation in American Law," *Minnesota Law Review*, Vol. 16, March, 1932, pp. 343-360.



## CHAPTER IV

### POWERS OF MUNICIPAL CORPORATIONS

#### *Outline*

##### Sources of Power

##### Character and Scope of Powers of Municipal Corporations

###### Express Powers

###### Implied Powers

###### Examples of Implied Powers

###### General Grants of Authority

###### Blanket Grants of Power Versus An Enumeration

###### Permissive and Mandatory Powers

###### Governmental and Corporate Powers

##### Limitations on the Exercise of Municipal Powers

###### Supremacy of the National Constitution, Laws, and Treaties

###### Supremacy of the State Constitution and Laws

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##### Common Law Rules Governing the Exercise of Powers

###### (1) Requirement of Reasonableness

###### (2) Rule Prohibiting Abuses of Power

###### (3) Rule Prohibiting the Delegation of Powers

###### (4) Requirement of Definiteness and Certainty

###### (5) Test of Public Purpose

##### Summary

##### The Powers of Municipal Officers

MUNICIPAL corporations are created by the states for the primary purpose of meeting the peculiar governmental needs of urban areas. They also are intended to serve as local agencies of state administration. Determination of the scope and character of the powers which these instrumentalities of government possess is a matter of great practical importance to persons who transact business with them, to state and local officials, and to the residents of cities.

The courts have disposed of countless cases in which the powers and duties of municipal corporations were in dispute. These decided cases constitute the most authoritative evidence of the body of legal rules known as the law of municipal corporations. This branch of American public law, the origin of which is traceable to England, has developed along the same general lines in each of the 48 states of the United States. Nevertheless, each state has its own law of municipal corporations and, although the controlling principles are essentially the same in every state, the application of these principles has resulted in differences and variations too numerous to be considered at length in this text.

## SOURCES OF POWER

The sources from which the powers of a municipal corporation are derived may be divided into two categories, primary and secondary. Primary sources are: (1) the constitution of the state in which the city is located; (2) statutes enacted by the state legislature; (3) the municipal charter; (4) the rules of common law and equity. Statutory sources include general laws applicable to all cities, general laws which apply to the class to which the particular city may belong, special acts, if any, which are binding upon only specified cities, and optional laws, either general or special, which the city may have accepted. Secondary sources include: (1) judicial decisions involving interpretation of the state constitution, statutes, and the city's charter; (2) the general policy of the state as disclosed by its legislation and the course of judicial decision; (3) administrative rules and regulations issued by state administrative agencies under constitutional or statutory authority. All of these sources, both primary and secondary, need to be consulted in order to ascertain the powers and duties of particular municipalities.

## CHARACTER AND SCOPE OF POWERS OF MUNICIPAL CORPORATIONS

Municipal corporations possess only such powers as have been delegated to them by the state. Unless there has been a grant of authority, municipalities lack legal competence to act—no matter how urgent the situation or how desirable the attainment of certain objectives. As in the case of the national government, the legal justification of municipal action depends on proof that the power to act has been granted. The tests which the courts apply are indicated by the typical judicial declaration that delegations of power to municipal corporations may be in express terms, by implication from express grants or combinations thereof, and by implication from the nature of municipal corporations and their declared objects and purposes.

**Express Powers.** The simplest form of delegation is an explicit statement to the effect that a city may do a certain thing; for example: "the city shall have power to preserve the public health and to determine and declare what shall be deemed nuisances, and to prevent and abate the same"; or "the city shall have power to regulate or prohibit bill boards in the city and to establish lines and grades upon which buildings may be erected, and beyond which such buildings shall not extend."

Express grants of authority to the municipal corporation and its officers are found in every city charter. In fact, an enumeration of the powers which cities may exercise is the usual method of designating the approved field of municipal regulation and service. Whether this method is preferable to a blanket grant of authority to exercise all powers relating to municipal affairs is a question which is reserved for later discussion.

**Implied Powers.** Implied powers are those which arise by inference from express grants, from the legal character of municipal corpora-

tions, and from the objects and purposes for which these agencies of urban government have been created. In drawing inferences with respect to the delegation of power to municipal corporations, the courts pursue a policy of *strict construction* in preference to the broad and liberal interpretation of constitutional provisions pertaining to the powers of the national government. The asserted reason for so doing is that the existence of municipal corporations as subordinate instrumentalities of government is merely a matter of state policy in the establishment of convenient, useful, and effective local governmental agencies. A broad, liberal, and loose construction of grants of power to such agencies is deemed to be inexpedient, unwise, contrary to sound public policy, and not within the intention of the state unless explicitly enjoined by statutory or constitutional provision.<sup>1</sup>

Doubts concerning grants of authority to cities are resolved against them, and if a disputed power is not included among the enumerated powers, the courts presume that the power has been withheld. The presumption may be overcome by demonstrating that the power in question has been delegated by implication, but under the rule of strict construction, the inference must be clear and necessary, not merely convenient, expedient or reasonably appropriate. An illustration is afforded by the action of the Missouri courts in deciding against the validity of the St. Louis income tax. Although the charter empowered the city "to assess, levy, and collect taxes for all general and special purposes on all subjects or objects of taxation," the courts held that this grant of power was not sufficiently broad to authorize St. Louis to adopt an income or earnings tax.<sup>2</sup> The doctrine of strict construction is closely associated with the long-established policy of enumerating the powers of municipal corporations. In recent years, some courts, although continuing to pay lip service to the doctrine of strict construction, have tended to construe grants of authority rather liberally.

In discussing implied powers, courts frequently refer to the statements of Dillon and McQuillin, the two leading authorities on the law of municipal corporations. According to the famous Dillon rule, municipal corporations possess the following powers in addition to those granted in express words: "those necessarily or fairly implied in or incident to the powers expressly granted" and "those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable."<sup>3</sup> Judge McQuillin has defined implied or incidental powers as those "necessarily arising from those expressly granted," "those essential to give effect to powers expressly granted," and "those recognized as pertaining or in-

<sup>1</sup>The 1947 Constitution of New Jersey contains the following stipulation: "The provisions of this Constitution and of any law concerning municipal corporations formed for local government or concerning counties, shall be liberally construed in their favor," Art. IV, Sec. VII, par. 11. However, this statement is followed by a recital of the well-known rule that the powers of municipal corporations shall include not only those granted in express terms but also those of necessary and fair implication or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by the Constitution or by law.

<sup>2</sup>*Carter Carburetor Corporation v. City of St. Louis*, 356 Mo. 646, 208 S. W. (2nd) 438 (1947).

<sup>3</sup>J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed. (Boston, Little, Brown, & Co., 1911), Vol. I, Sec. 237.

dispensable to local civil government" to enable a municipal corporation to fulfill the objects and purposes of its creation.<sup>4</sup>

The terms "necessary," "essential," and "indispensable" are the verbal indicators of strict implication. It is, of course, impossible to draw a hard and fast line between warranted and unwarranted inferences. Subject to the guiding principle of strict construction, each case is decided on its merits in the light of established precedent. Some judges have asserted that a municipal corporation may exercise such powers as are reasonably necessary to give effect to powers expressly granted, whereas others have maintained that "a municipal power will be implied only when without its exercise the expressed duty or authority would be rendered nugatory." As these statements indicate, the degree of strictness actually varies with the state, the court, the time, and the case. The courts seem to agree, however, that the construction of municipal powers never should be so strict and literal as to hamper unnecessarily, interfere with, or defeat the whole machinery of municipal regulation.

**Examples of Implied Powers.** The decided cases afford numerous illustrations of powers asserted by the courts to have been delegated by implication to particular municipal corporations. A grant of power to acquire lands for airport purposes was considered adequate authority for the establishment of marine and terminal facilities incidental and collateral to the construction and operation of an airport.<sup>5</sup> The express power to regulate traffic was held to warrant the adoption of a Cincinnati ordinance which required all agencies renting cars to the public to take out liability insurance or to post an indemnity bond as a prerequisite to the issuance of a license for the operation of such cars on the public streets by the persons hiring them.<sup>6</sup> An implied power to pay the expenses of a committee of officials attending meetings of the Mississippi Valley Association at St. Louis and the Rivers and Harbors Congress in Washington (1928) was predicated on express grants of power to control and regulate the construction of piers and wharves within the limits of Minneapolis and to lay out, improve, and control the streets.<sup>7</sup> Authority to purchase land just outside the corporate limits in order to obtain stone for manufacturing crushed rock for city purposes was upheld as a justifiable implication from express grants of power to improve streets and to purchase such real estate as the city deemed necessary or convenient for its use.<sup>8</sup>

The claims of cities that they possess powers by implication frequently are rejected by the courts. A consideration of specific instances may cast additional light on the processes of inference.

<sup>4</sup> E. McQuillin, *The Law of Municipal Corporations*, 2nd ed. (Chicago, Callaghan & Co., 1928), Vol. I, Sec. 367, pp. 815-816.

<sup>5</sup> *Wentz v. Philadelphia*, 301 Pa. 281, 151 Atl. 883 (1930).

<sup>6</sup> *Hodge Drive-It-Yourself Co. v. Cincinnati*, 284 U. S. 335 (1932).

<sup>7</sup> *Tousley v. Leach, Mayor, et al.*, 180 Minn. 293, 230 N. W. 788 (1930). The courts of most states have uniformly denied the existence of such a power by implication; it seems that in this case the Minnesota court abandoned the rule of strict construction.

<sup>8</sup> *Schneider v. City of Menasha, et al.*, 108 Wis. 298, 98 N. W. 94 (1903). If a general power cannot otherwise be exercised effectively, the right to acquire property by ordinary methods usually is considered to have been granted by implication. *Leads v. City of Richmond*, 102 Ind. 372, 1 N. E. 711 (1885).

In *Darby v. Otterman*,<sup>9</sup> it was decided that an express grant of authority to erect memorial buildings neither warranted the leasing of rooms to a private corporation organized solely for public purposes, nor authorized the city itself to engage in a moving picture business or other commercial enterprise in such a building. The court maintained that such an inference was unwarranted because the legislature had provided that the expenses of maintenance were to be paid out of the city's general fund or out of a special fund to be created by taxation, but had not authorized the meeting of expenses from profits arising from a commercial enterprise conducted by the city.

The case of *Van Eaton v. Town of Sidney*<sup>10</sup> arose under an Iowa legislative act which authorized cities, subject to approval by the voters, to purchase, establish, and operate electric power plants and to issue bonds to pay the cost thereof. Voters of the town of Sidney approved a proposition to meet the cost of necessary equipment from net revenues derived from the operation of the proposed plant, without resort to bond issues, taxation, or assessments against taxable property. The validity of a contract subsequently entered into in pursuance of the approved plan was challenged in court. In declaring the contract invalid, the court took the position that the statutory grant of power to finance such plants by bond issues, although not precluding payment from the proceeds of taxation, had the effect of barring the implication of power to utilize the method which had been selected.

Courts also have held that express power to own and operate a water supply system does not imply power to engage in the plumbing business;<sup>11</sup> that a grant of authority to pave streets does not include, by implication, the power to manufacture bricks;<sup>12</sup> and that authority to contract for the care of indigents in hospitals and to erect and maintain a hospital for indigents or for the treatment of diseases dangerous to public health does not warrant the purchase and operation of an ambulance for the general use of inhabitants who may require hospital treatment in case of sickness.<sup>13</sup>

Neither the plumbing business, nor brick manufacturing, nor the operation of an ambulance for general conveyance of the sick were considered necessary to the effective exercise of powers which had been expressly granted.

The examples which have been given illustrate the process of drawing inferences from express grants of authority to cities. There also are powers which arise by implication from the legal nature of municipal corporations. Among them are the power to sue and to be sued; to enter into contracts in order to effectuate the declared objects and purposes of incorporation; to acquire, own and dispose of property, both real and personal; and to adopt by-laws or ordinances. These powers may be exercised only to further the ends for which municipal corporations have been created, as evidenced by specific and implied grants of authority and by the primary function of serving as instrumentalities for local self-government.

<sup>9</sup> 122 Kan. 603, 252 Pac. 903 (1927).

<sup>10</sup> 211 Ia. 886, 231 N. W. 475 (1930).

<sup>11</sup> *Keen v. Waycross*, 101 Ga. 588, 29 S. E. 42 (1897).

<sup>12</sup> *Attorney-General v. Detroit*, 150 Mich. 310, 113 N. W. 1107 (1907).

<sup>13</sup> *Ducey v. Inhabitants of Town of Webster*, 237 Mass. 497, 120 N. E. 53 (1921).

**General Grants of Authority.** Although the powers of municipal corporations usually are enumerated, the enumeration sometimes is preceded or followed by a general grant of authority to take such action as may be necessary to promote the general welfare of the locality. Despite the fact that the usual effect of such a broad and indefinite grant of authority is to extend the power of the city to subjects not included in the enumerated list of powers, a general welfare clause is by no means a source of unlimited power.

In the first place, a grant of this type is construed by the courts as being restricted in scope to the *ordinary objects and purposes* of municipal corporations, viz., the regulation of matters pertaining to the local and internal affairs of the municipality. Power to deal with matters of state concern is not included. The matters comprehended are confined strictly to the customary field of municipal activity as established by law and by the course of judicial decision in the particular state in which the city is located. Of course, the line of demarcation between state and municipal affairs cannot be drawn with precision, and for this reason, together with the difficulty of imparting a definite meaning to so indefinite a phrase as "general welfare," the extent of the power which is conferred by general welfare clauses is uncertain.

A second rule regarding the effect of broad and indefinite grants of authority is that such grants are not to be construed as extending express powers which are specifically limited in one way or another. Otherwise the imposition of restrictions on expressly delegated powers would be rendered meaningless. On the other hand, the courts usually hold that an enumeration of powers in conjunction with a general welfare clause is not to be construed as a restriction on the latter. A general delegation of authority to enact ordinances for promotion of the general welfare represents an addition to the enumerated powers. It is designed to enable a city to take such action as may be reasonably necessary to attain the ends for which it was created.

**Blanket Grants of Power Versus An Enumeration.** There are two methods of conferring powers on cities, viz., by a blanket grant in general terms or by an enumeration of specific powers. The former of these methods has been utilized extensively in the countries of continental Europe, whereas the latter has prevailed in England and the United States.

A primary argument in favor of enumeration is that this method enables the charter-granting authority, usually the state legislature, to exercise effective control over municipalities and their officials by indicating clearly and precisely the field within which local authorities may act. In this way the state is able to forestall local encroachment on matters of state concern and may broaden or narrow the sphere of municipal regulation as circumstances warrant, with due regard for both state and local interests.

Furthermore, the policy of enumerating powers is considered a safeguard against local misgovernment, inasmuch as the state may readily restrict the discretionary powers of cities in the event of inefficient or corrupt gov

ernment. It also is claimed that enumeration reduces doubts concerning the scope of power of a municipality and results in a minimum of costly and time-consuming litigation.

The making of an adequate grant of enumerated powers requires the exercise of great care in anticipating the needs of municipalities. This task is a difficult one which requires more foresight than the typical charter-making authority possesses. Experience with the policy of enumeration proves that cities frequently are forced to seek additional grants of power to deal with old as well as new situations, partly because of important omissions from the original grant of authority and partly because of the judicial rule of strict construction which has been associated with the plan of enumerating powers. The result is delay, inconvenience, and expense.

A blanket grant of authority to deal with matters of local concern enables cities to undertake the solution of such problems as may arise without the necessity of obtaining clear grants of power from the legislature to cover each of the many situations which call for governmental action. Cities enjoy greater freedom of action, the work of the charter-making authority is simplified, and there is less likely to be legislative meddling in local affairs. At the same time, the interests of the state are in no way endangered because the courts may be resorted to in order to prevent invasion of the field of state affairs and the legislature may either subject cities to explicit statutory restraints, if necessary, or establish an effective system of state administrative control.<sup>14</sup> Nor is a blanket grant of authority irrevocable.

From the standpoint of cities, the blanket grant seems preferable because of its elasticity. This feature is particularly advantageous in states which neither permit special legislation for cities nor confer home rule privileges. In these states an enumeration of powers in general laws applicable to all cities or to all of a designated class may work hardship on particular cities whose needs as to powers happen to be inadequately met by the general code.

The chief disadvantage of the blanket grant is the vagueness of such phrases as "local concerns" or "municipal affairs." Since these phrases acquire definite meaning only through the slow process of adjudication, the judgment of the courts is substituted for that of the legislature in prescribing the limits of municipal action. In other words, enumeration by litigation replaces enumeration by legislative action. However, under a blanket grant, cities may act first and litigate afterwards with a reasonably good chance of justifying their claims to power. Of course, if the judicial definition of municipal affairs proves too narrow, it becomes necessary for cities to obtain specific grants of authority from the state legislature or by constitutional provision in order to overcome the effects of adverse court decisions. In that event, the blanket grant is combined with an enumeration of certain powers. This compromise scheme often is considered more practicable than either

<sup>14</sup> In states having a constitutional home rule system for cities under which freedom from legislative control is guaranteed in the field of municipal affairs, the choice between a blanket grant of power or an enumeration of powers rests solely with the local charter commission. Simplification of the work of the charter commission and greater freedom of action for the governing authorities of the city constitute the advantages of a blanket grant in these states. Under other systems of constitutional home rule, the state legislature retains authority to enumerate the powers of cities if it so desires.

a simple blanket delegation of authority or an enumeration which is not supplemented by a general grant of power.

**Permissive and Mandatory Powers.** Most of the powers conferred on a municipal corporation are permissive or directory, rather than mandatory, in character. Their use rests with the discretion of the municipality's officers. On the other hand, the exercise of mandatory powers is obligatory, and if the municipality fails to discharge the obligation imposed on it, the courts may be resorted to in order to compel performance. Accordingly, it becomes necessary at times to determine whether a granted power falls within one or the other category.

The problem is to ascertain the intention of the authority by whom the delegation of power has been made. That the language used sometimes may be far from conclusive is indicated by court rulings to the effect that "may" means "must" and that "shall" has been used in the permissive sense. Although words usually are given their ordinary meaning, weight is assigned to such other considerations as the purpose of the law conferring power, the effect on individual rights if the power be not exercised, the general consequences to the public of the non-exercise of the power in question, and the time and the manner of compliance. Words alone are not conclusive in determining whether there has been a delegation of discretionary power or an imposition of an imperative duty.

**Governmental and Corporate Powers.** The powers of municipal corporations are commonly divided into two classes, those which are governmental or public and those which are corporate, proprietary, or private. This differentiation, which is of major importance in several branches of the law of municipal corporations, is a source of much confusion for judges, lawyers, and laymen. The inaccuracies and inconsistencies of definition and classification which account for this confusion become apparent upon comparison of the rulings in different states and in the various branches of law in which the distinction between governmental and corporate functions is applied.

Governmental functions often have been defined as those which are performed by municipal corporations as agents of the state in furtherance of matters of concern to the entire state population. Such activities as police administration, fire protection, public education, and the promotion of public health are almost always classified as governmental.

Corporate functions have been described as those which are undertaken by municipal authorities to serve the special interests and to meet the peculiar needs of the local community which is incorporated. A municipal corporation is said to act in a corporate or private capacity when, like a private corporation, its activities pertain to ends pursued for the particular advantage of its members instead of for the benefit of the people of the state at large. Examples of corporate or private functions are the ownership and operation of water supply systems, electric light and power plants, and



street railways. However, even these functions are classified as governmental in certain branches of the law of municipal corporations.

The number of activities placed in the corporate category attains a maximum in the body of law concerning the liability of municipal corporations in tort. Comparatively few powers are classified as corporate in those branches of the law pertaining to the execution of judgments against the property of municipal corporations, to the taxation of municipal property by other municipalities, and to the alienation of property which municipal corporations own. Other branches of law in which the distinction is drawn are those concerning the scope of legislative control over the property of cities and the binding effect of contracts extending beyond the terms of officers acting for a municipality. The difference between governmental and corporate functions also has been recognized in the field of constitutional law relative to the power of the national government to tax the states and their instrumentalities, including municipal corporations. Some of the consequences of the distinction under consideration will be discussed in subsequent chapters, particularly in the one immediately following which deals with the liabilities of municipal corporations.

#### LIMITATIONS ON THE EXERCISE OF MUNICIPAL POWERS

The validity of the acts of municipal corporations depends not only on the possession of authority to deal with certain subjects, but also on the manner in which powers which have been granted, whether expressly or by implication, are exercised. Inasmuch as municipalities are subordinate instrumentalities of government, ordinances and other acts are invalid if in conflict with superior grades of law. Moreover, municipal powers must be exercised in conformity with a number of rules which the courts have developed. Most of these are derived from the basic principle that a municipal corporation may exercise only such powers as have been delegated to it.

**Supremacy of the National Constitution, Laws, and Treaties.** Cities are obliged to exercise their powers in such a way as not to contravene the provisions of the national constitution, laws, and treaties. All of the express and implied limitations imposed on the states by the Constitution of the United States are equally binding on municipal corporations.

The national government is supreme within the sphere of its delegated authority and cities have no right to interfere with its legitimate operations. Consequently, conflicts between the acts of municipal corporations and valid acts of Federal authorities are resolved in favor of the latter. Municipal exercises of the taxing power and the local police power often give rise to litigation in which the question of conflict with the national Constitution, Acts of Congress, and treaties is raised.

Of the various fields within which the national government enjoys authority to act, the one most frequently infringed upon by municipalities is that of foreign and interstate commerce. Neither the states nor cities may exercise their powers in such a way as to discriminate against, to place undue

burdens upon, or to interfere substantially with foreign and interstate commerce. Among the municipal regulations which may affect this commerce in an unconstitutional manner are such as pertain to navigation, to railroads, street railways, and buses, to express, telegraph, and telephone companies, and to wholesalers, retailers, solicitors, and peddlers.

A recent illustration of an unconstitutional application of a city tax to transactions in foreign and interstate commerce is afforded by the case of *Joseph v. Carter & Weekes Stevedoring Co.*<sup>15</sup> New York City's gross receipts tax was declared unconstitutional as violative of the commerce clause in its application to receipts derived from the loading and unloading of vessels employed in interstate and foreign commerce. The tax was held to impose an invalid burden on commerce.

In an earlier case, which also involved New York City, an express company doing an interstate business challenged the constitutionality of a group of city ordinances which regulated specified businesses, including that of expressmen. These ordinances provided that no one could engage in the businesses in question without obtaining an annual license from the mayor. Moreover, licenses could be granted only to United States citizens or to aliens who had declared their intention to become citizens; license fees were levied for each express wagon and driver; and bond had to be given for every licensed vehicle. In restraining the enforcement of these ordinances with respect to the conduct of interstate business by the Adams Express Company, the Supreme Court pointed out that local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and to prohibit its exercise in the absence of a local license. The Court noted that Congress had provided its own scheme of regulation in order to secure the discharge of the public obligations which the express business involves.<sup>16</sup>

In addition to restrictions of the foregoing type which are associated with the division of powers between the national government and the states, the Constitution places various direct limitations on the states in the exercise of the powers reserved to them. As far as the municipal ordinance-making power is concerned, the most important of these constitutional "don'ts" are those which prohibit the passage of laws impairing the obligation of contracts, the deprivation of life, liberty or property without due process of law, and denial of the equal protection of the laws.

Municipal corporations frequently are parties to contracts with private persons or corporations. Such agreements, as well as contracts between private parties, are protected against impairment by the action of municipalities. The obligation of a contract is the law in effect at the time the contract is made which binds the parties to perform their agreement. Any law which amounts to a denial or obstruction of the rights accruing under a contract impairs its obligation.

<sup>15</sup> 330 U. S. 422 (1947). See also *McGoldrick v. Gulf Oil Corporation*, 309 U. S. 414 (1940).

<sup>16</sup> *Adams Express Company v. City of New York*, 213 U. S. 14 (1914). Cf., *Nippert v. City of Richmond*, 327 U. S. 416 (1946); *Real Silk Hosiery Mills v. City of Portland*, 268 U. S. 325 (1925); *Robbins v. Shelby County Taxing District*, 120 U. S. 489 (1887).

In *Los Angeles v. Los Angeles City Water Co.*,<sup>17</sup> it was held that a municipal corporation cannot pass a valid ordinance reducing water rates in disregard of a contract entered into with the water company by the terms of which the municipality had agreed not to reduce the rates charged at the time the agreement was negotiated. Again, in *New York Electric Lines Co. v. Empire City Subway Co.*,<sup>18</sup> the Court decided that the acceptance of a permit granted by a municipal corporation to place wires in the city streets creates a contract which cannot be revoked or impaired by municipal resolution or ordinance as long as the franchise is not lost by mis-user or non-user.

The Fourteenth Amendment provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." Of these limitations, the due process and equal protection guarantees are most frequently relied on in contesting the validity of acts of municipal corporations.

The due process clause has been construed as affording protection against oppressive, capricious, and arbitrary governmental action in general.<sup>19</sup> It enables the courts to pass judgment on the reasonableness of municipal regulations. The equal protection clause prevents arbitrary discriminations against persons and classes of persons. Classification with a reasonable basis in relation to the objectives of regulation is permissible because the equal protection guarantee is intended merely to secure equal rights to all persons under like circumstances. Precise tests of reasonableness have not been devised by the Supreme Court in connection with either of these guarantees. The Court has stated that the gradual process of judicial inclusion and exclusion, as cases involving a construction of the words "due process of law" and "equal protection of the laws" shall require, is better than attempted definition of these restrictive phrases.

Zoning ordinances which restrict the height and area of buildings and the use of land and buildings on a district basis have been held to be consistent with the requirements of due process and equal protection, but certain provisions of particular zoning ordinances have been declared to be unreasonable, arbitrary, and therefore unconstitutional. For instance, in *Nectow v. Cambridge*,<sup>20</sup> the Court decided that an owner of property which bordered on factories located near railroad tracks was unconstitutionally deprived of his property without due process of law by zoning it into the residential class. The property could not be used profitably for residential purposes, and the city was unable to show that its action promoted the health, safety, convenience, and general welfare of the inhabitants of the part of the city affected.

An ordinance of the city of Griffin, Georgia, provided that the distribution

<sup>17</sup> 177 U. S. 558 (1899).

<sup>18</sup> 235 U. S. 179 (1914).

<sup>19</sup> In *Nebbia v. New York*, 291 U. S. 502 (1934), the Court remarked: "The guaranty of due process demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

<sup>20</sup> 277 U. S. 183 (1928).

of literature of any kind without first obtaining the written permission of the city manager constituted a nuisance which was punishable as an offense against the city. The Supreme Court declared this ordinance unconstitutional under the due process clause on the ground that it struck at the very foundation of freedom of the press by subjecting the press to license and censorship. "The ordinance," said the Court, "is not limited to 'literature' that is obscene or offensive to public morals, or that advocates unlawful conduct. There is no suggestion that the pamphlet and the magazine distributed in the instant case were of that character. The ordinance embraces 'literature' in the widest sense."<sup>21</sup>

In *Martin v. Struthers*,<sup>22</sup> the Court declared unconstitutional a city ordinance which made unlawful the ringing of door bells or the knocking on doors for the purpose of summoning the occupant of a residence to the door in order to give him handbills, circulars, or other advertisements. The Court took the position that this ordinance violated freedom of the press and speech as protected by the due process clause of the Fourteenth Amendment. Again, in *Samuel Saia, Appellant, v. People of the State of New York*,<sup>23</sup> the Court set aside a municipal ordinance which prohibited the use of amplifying devices casting sound upon streets and public places, except with the permission of the chief of police. No standards for the exercise of the chief's discretion were prescribed. The ordinance was condemned as establishing a previous restraint on the right of free speech in violation of the due process clause.

The effect of the equal protection clause on classification in connection with municipal regulations and their administration will be illustrated by consideration of three leading cases. One of them involved an attempt to draw the "color" line with respect to residence. The other two arose in connection with local control over the laundry business.

The city of Louisville passed an ordinance which forbade colored persons to occupy a lot in a block in which the greater number of residences were tenanted by whites. Similar restrictions were imposed on white persons with respect to blocks in which colored people predominated. In *Buchanan v. Warley*,<sup>24</sup> the Supreme Court declared this ordinance unconstitutional on the ground that it violated the equal protection clause by discriminating arbitrarily between classes of persons.

An ordinance of the city and county of San Francisco required persons desiring to engage in the public laundry business within certain territorial limits to obtain certificates signed by the health officer and the board of fire wardens. It also made unlawful the washing and ironing of clothes on Sundays and on weekdays between the hours of 10 p. m. and 6 a. m. In *Soon*

<sup>21</sup> *Lovell v. Griffin*, 303 U. S. 444 (1938).

<sup>22</sup> 319 U. S. 141 (1943). See also *Murdock v. Pennsylvania*, 319 U. S. 105 (1943) and *Hague v. C. I. O.*, 307 U. S. 496 (1939).

<sup>23</sup> United States Supreme Court, Law Ed., Advance Opinions, 1947-1948, Vol. 92, No. 18, p. 1087.

<sup>24</sup> 245 U. S. 60 (1917). In *Shelly v. Kraemer*, United States Supreme Court, Law Ed., Advance Opinions, 1947-1948, Vol. 92, No. 16, p. 845, the judicial enforcement by state courts of restrictive covenants as to the ownership or occupancy of property based on race or color was declared to be inhibited by the equal protection clause of the Fourteenth Amendment.

*Hing v. Crowley*<sup>25</sup> it was contended that the imposition of the working-hour restrictions solely on the laundry business constituted an arbitrary and unwarranted discrimination in violation of the equal protection clause. The Court rejected this contention on the ground that the risks peculiar to the laundry business afforded a valid basis of classification.

The ordinance was subsequently amended to require the consent of the board of supervisors in addition to certification by the health officer and the fire wardens. Yick Wo, having failed to obtain the consent of the supervisors, was prosecuted for engaging in the laundry business without the necessary permission. Testimony showed that the board of supervisors exercised its power in such a manner as to discriminate against Chinese applicants. In holding that the discrimination constituted a denial of equal protection of the laws, the Supreme Court stated: "Though the law itself be fair upon its face and impartial in appearance, yet if it is applied and administered by public authority with an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution."<sup>26</sup>

**Supremacy of the State Constitution and Laws.** Municipalities not only must exercise their powers in such a way as to avoid conflict with the United States Constitution, national laws, and treaties, but also must act in conformity with the provisions of state constitutions and state laws, including legislative acts, administrative regulations and orders, and the rules of common law and equity. The governing authorities of cities, like those of the state, are at all times obliged to respect the rights guaranteed to individuals under the state constitution. Among these rights are the usual guarantees of freedom of speech, freedom of the press, the right to assemble and to petition the government for redress of grievances, security from unreasonable searches and seizures, compensation for the taking of private property for public uses, and due process of law in depriving persons of life, liberty, or property. Besides restraints such as these which apply to all governmental agencies, every state constitution contains some provisions which pertain to cities in particular. Those which are most commonly found relate to the annexation of territory, the amount of indebtedness, the maximum permissible tax levy, the loaning of credit or granting of money in aid of individuals or corporations, and the granting of franchises.

If matters of this type are not dealt with by constitutional provision, they almost invariably are included among the numerous subjects regulated by legislative acts. Generally speaking, statutes enacted by the state legislature supersede municipal regulations *in the event of conflict*. A notable exception to this rule is established by constitutional provision in the few states which guarantee cities freedom from legislative interference in the field of municipal affairs.

So numerous are the statutes passed by the legislatures of the several

<sup>25</sup> 113 U. S. 703 (1884).

<sup>26</sup> *Yick Wo v. Hopkins*, 118 U. S. 356 (1886).

states and so various are their provisions, that a detailed consideration of their character is out of the question. Suffice it to observe that legislative enactments in respect to municipal revenues and expenditures, accounting, indebtedness, the assessment of property for taxation, nominations and elections, the registration of voters, public health, public welfare, public utilities, police administration, public education, the regulation of traffic, and public improvements are to be found in every state, and that municipal regulations in conflict therewith are unenforceable. Furthermore, there is an increasing tendency to confer authority relating to cities on state administrative agencies, and, unless this authority is merely advisory or supervisory in character, municipalities must act in conformity with such applicable rules, regulations, and orders as may be issued.

**Supremacy of the City Charter.** A city charter is analagous to a constitution and constitutes the most important single source of municipal powers and duties. The governing authorities of cities must at all times abide by charter requirements, and an ordinance or other act of a municipal corporation which conflicts with charter provisions is invalid and unenforceable. With the exception of charters drafted and adopted under home rule provisions, city charters are grants in the form of either general, special, or optional legislative acts through which the state legislature exercises such control over cities as it deems expedient. Charters, whether of the home rule or legislative variety, not only prescribe the form of city government and the powers and duties of municipal officials, but frequently establish the procedures to be observed in the exercise of various powers and often define the details of policy with respect to important municipal problems. Procedural requirements must be substantially followed and policies established by charter provision may not be altered at the discretion of city authorities.

**Common Law Rules Governing the Exercise of Powers.** Even if the possession of authority to deal with a given subject be clearly established and the power has not been exercised in such a manner as to conflict with the national and state constitutions, Acts of Congress, treaties, state statutes, administrative regulations and orders, and the city's charter, there still remains the possibility that an exercise of power may be declared invalid by reason of the restraining effects of certain common law rules pertaining to municipalities.

One of these is the well-established rule that an ordinance passed under a general grant of power, or by virtue of implied or incidental powers, may be set aside if unreasonable and arbitrary. Another is that powers conferred on a municipal corporation and its officers cannot be surrendered or delegated to others. Under a third rule, an exercise of power will be invalidated if it involves fraud, corruption, improper motives or influences, plain disregard of duty, or gross abuse of power. Fourthly, an ordinance will be declared invalid if its provisions are too vague, indefinite and uncertain to permit compliance. Finally, municipal powers may be used only for the achievement of public purposes.

(1) **Requirement of Reasonableness.** It has been shown that acts of municipal corporations, like those of the state, must conform to constitutional guarantees of due process of law and of equal protection of the laws. The effect of these limitations is to prevent arbitrary and unreasonable regulations and discriminations. Quite apart from these constitutional restrictions, however, the validity of municipal ordinances may be challenged under the common law rule that municipal corporations must exercise their granted powers in a reasonable manner. As stated by a leading authority, "in cases involving municipal ordinances, the doctrine of reasonableness has a wider scope than in cases relating to state legislation, and this because municipal ordinances are tested not only by the constitution but also by statutes, the common law and equity and the public policy of the state."<sup>27</sup> Although it may be difficult to distinguish between constitutional and other standards of reasonableness, the distinction undoubtedly exists.

The common law rule applies only to ordinances which are passed either under grants of authority of a general nature or under implied or incidental powers. If an ordinance has been enacted under a legislative grant of authority which is specific in character in that the manner of exercising the delegated power has been prescribed in precise and definite terms, or if an ordinance has been expressly ratified by the state legislature, the courts refuse to permit the submission of evidence to demonstrate its unreasonableness, except in the event of an attack which is based on constitutional grounds. If an identical ordinance represents an exercise of a general grant of authority or of an implied power, evidence designed to prove it arbitrary and unreasonable may be presented even though no constitutional question be raised.

In *State ex rel. Kennelly v. Jersey City*,<sup>28</sup> a municipal board was expressly empowered by statutory provision to specify the number of street railway tracks which might be laid in any street, lane, or avenue of the city. The court held that this delegation was too specific to permit it to overturn an ordinance authorizing the laying of a double track on a particular street. It had been contended that the ordinance was unreasonable in view of the narrowness of the street and of its other uses.

The common law requirement of reasonableness in general has resulted in the formulation of two derivative rules with respect to the validity of municipal ordinances. One is that ordinances must not place unreasonable or undue restraints on trade, and the other that ordinances must be fair, impartial, and uniform in operation and not involve arbitrary discriminations. Discriminatory regulations and regulations in restraint of trade also may be attacked under constitutional guarantees of due process and equal protection.

The case of *People v. Gibbs*<sup>29</sup> arose under an ordinance to license and regulate auctioneers and auctions held within the city of Detroit. Gibbs was prosecuted for violating a section of the ordinance which provided, "No such

<sup>27</sup> E. McQuillin, *op. cit.*, Vol. II, Sec. 775, p. 756.

<sup>28</sup> 57 N. J. L. 293, 30 Atl. 531 (1894).

<sup>29</sup> 186 Mich. 127, 182 N. W. 1053 (1915).

person doing business as a duly licensed auctioneer shall operate a public auction room or sell goods at public auction, within the meaning of this ordinance, except on week days between the hours of 8 A. M. and 6 P. M." The only misconduct charged against Gibbs was that of selling goods at auction after 6 o'clock in the evening. As the court pointed out, no evidence was presented showing in what manner auctioneering could annoy or disturb the public, or menace the peace, good order, health, or welfare of the community, more after than before 6 o'clock, or more than other lines of business carried on at the same time. Accordingly, the quoted section of the ordinance was declared invalid as a discrimination in restraint of trade and an unreasonable regulation beyond the limits of police power conferred on the municipality.

A different conclusion was reached by a Kentucky court in a case involving an ordinance of Louisville which made it unlawful for pawnbrokers, second-hand dealers, junk merchants or junk dealers to operate after a specified hour in the evening. The reasonableness of the restriction was based on the fact that thieves, who resort to such places to dispose of stolen goods, are detected with greater difficulty after dark than during the daytime.<sup>30</sup>

In deciding whether or not a regulation is reasonable, the courts consider its purpose, the means adopted to attain the end in view, its necessity, the manner of its operation, and all existing circumstances pertinent to its subject-matter. An ordinance reasonable on its face may nevertheless be unreasonable because of the situation to which it applies. A case in point is *Hawes v. Chicago*.<sup>31</sup>

The city of Chicago had adopted an ordinance providing for the construction of a cement sidewalk on a specified portion of a certain street. Uncontradicted evidence in the case showed that the assessed property was an unsubdivided tract of land used solely as a field for raising hay; that the street never had been improved, curbed, graded, paved, or sewered; and that five months prior to the passage of the ordinance a wooden sidewalk had been constructed in strict compliance with the provisions of an earlier ordinance. In declaring the ordinance void in so far as it affected the property in question, the court said, "Now, can it for a moment be contended that it is not unreasonable, unjust, and oppressive to compel the owner of a vacant twenty-acre lot first to construct and pay for a wood sidewalk, and then, within less than six months, and when it is in substantially as good condition as when first built, and in all respects safe, convenient and sufficient for public use and travel, take it up, throw it away and put down another in its place at an expense of over \$1600?"

The common law requirement that ordinances be reasonable qualifies the general rule that immunity from judicial control extends to the exercise of strictly discretionary municipal powers, whether legislative or administrative in character. Courts lack authority to invalidate municipal action merely on the ground that it is unwise or inexpedient, that it involves an extravagant

<sup>30</sup> *Hyman v. Boldrick*, 153 Ky. 77, 154 S. W. 369 (1913).

<sup>31</sup> 158 Ill. 653, 42 N. E. 373 (1895).



outlay of public funds, or that it represents an error of judgment. Nor, with certain exceptions, may the motives of municipal officials be subjected to judicial inquiry. On the question of reasonableness, however, the judgment of the courts prevails over that of city authorities. The apparent rigor of the rule is somewhat relaxed because of the presumption in favor of the proper exercise of municipal powers. This presumption, which is in contrast with the one against municipal corporations in determining whether a power has been granted, may be overcome only by evidence which clearly shows an exercise of power to be unreasonable, arbitrary, and therefore invalid.

(2) **Rule Prohibiting Abuses of Power.** The courts also may prevent "an abuse of discretion." In the legal sense, *abuse of discretion* implies "perversity of will, passion, or moral delinquency" and includes fraud, corruption, gross abuse of power, bad faith, plain disregard of duty, improper motives or influence, and wanton exercises of power plainly detrimental to public interests or injurious to private rights. The existence of reasons so grave as these warranting an interference with the exercise of discretionary powers is a matter for judicial determination to be decided as individual cases arise. Non-discretionary acts are subject to more rigorous scrutiny by the courts.

(3) **Rule Prohibiting the Delegation of Powers.** If the acts of a municipal corporation have survived the tests of conflict with superior grades of law, of reasonableness, and of abuse of power, there still is the possibility that they may be set aside on other grounds. It is a firmly established rule that the powers granted to a municipal corporation and its officers or agents cannot be surrendered or delegated to others. Municipal authorities are prohibited from transferring their powers either to private individuals or corporations or to other public agencies.

Attempts to surrender or delegate powers to private parties by contract, franchise, or ordinance have been checked by the courts on various occasions. An ordinance of Cincinnati made it unlawful for the driver or operator of a vehicle to park it between designated points before a named railroad station without obtaining permission from "the person having supervision over said passenger station." This provision was declared invalid because of the delegation of authority to a private person.<sup>82</sup> In another case, *Egan v. San Francisco*,<sup>83</sup> a contract was held void because it provided for the management of a public building by trustees whose actions were not subject to control by the city. Only a minority of the trustees were to be selected by the city which had entered into the contract under power to erect an opera house on municipal property. Again, in *Adams v. Gorrell*,<sup>84</sup> it was decided that legislative power is unlawfully delegated by an ordinance which forbids the storage of gasoline without the consent of another property owner.

Another important group of cases consists of those in which it is con-

<sup>82</sup> *City of Cincinnati v. Cook*, 107 O. S. 223, 140 N. E. 655 (1923).

<sup>83</sup> 165 Cal. 576, 133 Pac. 294 (1913).

<sup>84</sup> 119 O. S. 139, 162 N. E. 397 (1928).

tended that power granted to a designated agency of city government has been transferred illegally to another public agency in violation of the fundamental maxim that powers and duties imposed on particular organs, officers, or departments cannot be delegated. Thus power vested in the mayor and council to fix the rate of interest on an airport loan cannot be granted to finance commissioners;<sup>85</sup> and if the power to remove an officer is delegated to the council, that body lacks authority to confer the power on a committee of its own members or on some other officer.<sup>86</sup>

The general rule barring the delegation of powers is qualified by recognition of a distinction between "discretionary" and "ministerial" powers. Under no circumstances may there be a delegation of *discretionary* powers. On the other hand, *ministerial* powers may be delegated. The latter have been defined as powers which are non-discretionary in character, but this definition is unsatisfactory because there are few, if any, powers which do not necessitate the exercise of some degree of judgment in one sense or another. The distinction really is based on differences in the *kind* and *degree* of discretion, as indicated in the following quotation:

The true distinction, therefore, is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of law. The first cannot be done; to the latter no valid objection can be made.<sup>87</sup>

The foregoing definition is too narrow because it merely covers the making and execution of law. Powers which commonly are classified as executive or judicial in character also may call for the exercise of a discretion which falls within the scope of the general rule prohibiting the delegation of discretionary powers. Examples are the appointive and removal powers (executive) and the power of deciding cases arising under the law (judicial).

More broadly defined, discretionary powers are those which call for the exercise of a discretion which involves the making of a decision concerning an end to be achieved. Ministerial powers are subsidiary in character and are exercised in furtherance of pre-determined objectives. They are non-discretionary only in the limited sense that such exercise of discretion as may be necessary pertains to *how* something is to be done rather than to the determination of *what* is to be done. Thus the selection of ways and means of effectuating an established policy, the exercise of judgment in controlling circumstances and attendant acts in the performance of a duty, or the determination of questions of fact in a particular situation are actions which fall in the "ministerial" category.

It has been held that the signing of bonds is a ministerial duty which may be delegated to an agent or other person by the officer upon whom it has been imposed. On the other hand, the power to sell bonds must be exercised by the officer to whom it was granted because the authority to fix a price is

<sup>85</sup> *Douty v. Baltimore*, 155 Md. 125, 141 Atl. 499 (1928).

<sup>86</sup> *State ex rel. Arnold v. Milwaukee*, 187 Wis. 505, 147 N. W. 50 (1914).

<sup>87</sup> *Cincinnati, W. & Z. Railroad Co. v. Commissioners*, 1 O. S. 77 (1852).

discretionary in nature.<sup>38</sup> If power be vested in the council to determine the character, kind, and extent of improvements, the material to be used, or the grade of streets and sidewalks, such power cannot be delegated by ordinance or resolution to the city engineer. However, the latter may be authorized to direct and supervise the work of construction according to specified details, or to prepare plans, specifications, and estimates of costs for proposed public improvements.<sup>39</sup>

In exercising the power to regulate business, municipal councils usually find it expedient to charge some administrative officer or board with the duty of issuing licenses or granting permits. An ordinance which delegates this power is valid if it establishes definite standards for the guidance of the administrative agent in granting or withholding the license or permit. However, if the officer or board be authorized to grant or deny at pleasure without reference to any criterion established by the council, the delegation of power is invalid because of failure to fix the limits within which administrative discretion may be exercised.

Thus in *Thompson v. Smith*,<sup>40</sup> an ordinance was declared invalid because it authorized the chief of police to revoke the permit of any driver who, in the chief's opinion, became unfit to drive an automobile on the streets of the city. No standard of fitness was prescribed in the ordinance and the discretion of the police chief extended beyond the mere determination of facts on which application of the ordinance depended. On the other hand, in *Booth v. Dallas*,<sup>41</sup> the court upheld an ordinance which required the weekly inspection of motor busses and stipulated that the city automobile inspector should issue an operating permit if he found the vehicles *safe for use*. The authority delegated to the inspector was considered to be ministerial in character. In its opinion, the court remarked that in ministerial matters much may be left to the judgment and discretion of public officials in reference to matters resting peculiarly on professional or expert knowledge and skill.

The assumption that cases like the foregoing have been or will be decided in the same way in all jurisdictions is unwarranted. In this, as in other branches of law, conflicting court decisions are common. This situation is understandable in view of the inadequacies of definition, the consequent impossibility of drawing a precise line of demarcation between discretionary and ministerial powers, and the difficulties involved in applying a guiding principle to the innumerable circumstances which may arise in the dynamic field of city government.

(4) Requirement of Definiteness and Certainty. Two other restrictions on the exercise of municipal powers remain for consideration. One of them pertains to the ordinance-making power and consists of the requirement that the provisions of an ordinance must be definite and certain in expression. If an ordinance lacks this quality, it is void, even though it

<sup>38</sup> E. McQuillin, *op. cit.*, Vol. VI, rev., (1937), Sections 2446, 2462.

<sup>39</sup> *Ibid.*, Vol. V, Sections 1967, 2027.

<sup>40</sup> 155 Va. 387, 154 S. E. 579 (1930).

<sup>41</sup> (Tex. Civ. App.) 179 S. W. 301 (1915).

may be valid according to all other tests. The point is illustrated by an ordinance of the city of Portland, Oregon, which provided as follows: "The top of any chimney, flue, stack or cupola which emits sparks or which is used in connection with shavings or sawdust used as fuel, shall be covered with heavy wire netting of a mesh fine enough to arrest the passage of sparks." In *Oregon Box & Manufacturing Co. et al. v. Jones Lumber Co.*,<sup>42</sup> the court concluded that a man of ordinary intelligence could not tell by reading the ordinance how fine a mesh must be in order to arrest the passage of sparks and that the ordinance was unenforceable because of vagueness resulting from the omission of a fixed standard whereby a person could determine whether or not he could comply with its terms.

(5) **Test of Public Purpose.** Finally, the exercise of municipal powers is subject to the general limitation that such powers may be used only for public purposes and not for the promotion of strictly private interests or for the special benefit and advantage of private persons. The phrase "public purpose" is difficult to define, but in a general sense it means a purpose which is intimately related to, if not identified with, the general welfare of the inhabitants of a politically organized community. Since each case is decided on its merits, the meaning of the phrase develops gradually through the slow process of inclusion or exclusion in the course of judicial decision. Precedent plays an important, but not an exclusive, part in the process.

As has been asserted repeatedly by the courts, the instrumentality or agency through which an end is to be attained is not determinative of the public or private character of that end. Accordingly, grants of funds raised by taxation to private persons or corporations are not prohibited if a public purpose is served. Examples are grants to privately owned and managed libraries,<sup>43</sup> hospitals,<sup>44</sup> and railroads which render a public service. On the other hand, the grant of public monies to a private concern manufacturing automobiles or clothing for profit constitutes a contribution for a strictly private purpose. Up to the present time, at least, that has been the attitude of the courts.

The question of public purpose is raised most frequently in connection with exercises of the powers of taxation and eminent domain and when municipalities undertake to provide new services which in the past have been furnished for the most part by private enterprise. Besides such older functions as the opening, maintenance, and paving of public streets, the construction and operation of water supply and sewerage systems, the collection and disposal of municipal refuse, and the maintenance of a police force, newer functions which have survived the test of public purpose in one jurisdiction or another include the ownership and operation of electric light and power plants, gas plants, coal and fuel yards for the sale of fuel

<sup>42</sup> 117 Ore. 411, 244 Pac. 313 (1926).

<sup>43</sup> *State ex rel. Trustees of La Crosse Public Library v. Bentley, Mayor, et al.*, 163 Wis. 632, 158 N. W. 306 (1918).

<sup>44</sup> *Finan v. Cumberland*, 154 Md. 563 141 Atl. 269 (1928).

without financial profit, ice plants, airports, golf courses, zoological parks, municipal bands, municipal stadiums, and gasoline stations. Activities which have been declared illegal on the ground that the purpose was private include buying and selling real estate for profit, the operation of a motion picture theater, the loaning of funds to owners whose homes have been destroyed by fire, the issuance of bonds for the purpose of aiding private manufacturing or mining enterprises, and the payment of part of the expenses for the maintenance of a private art museum.

Disagreement among the courts of the several states as to whether or not a given purpose is public is illustrated by the fact that in some states the sale of fuel, the manufacture of ice, and the operation of golf courses by municipalities have been placed in the category of private rather than public purposes. Conceptions of public purpose vary from time to time as well as in places, and in this connection the following statement made by the court of last resort in Maine deserves quotation:

The courts have never attempted to lay down with minute detail an inexorable rule distinguishing public from private purposes, because it would be impossible to do so. Times change. The wants and necessities of the people change. The opportunities to satisfy those wants and necessities by individual effort may vary. What was clearly a public use a century ago may, because of changed conditions, have ceased to be such today.—On the other hand, what could not be deemed a public use a century ago may, because of changed economic and industrial conditions, be such today. Laws which were entirely adequate to secure public welfare then may be inadequate to accomplish the same results now.<sup>48</sup>

The rule that the powers of municipal corporations may be used only for public purposes is founded on constitutional provisions and on the principles of the common law. In the case of the national Constitution, the due process clause of the Fourteenth Amendment prohibits the states and local units from using their powers for the attainment of strictly private ends. Most of the state constitutions contain the same or an equivalent provision, as well as clauses confining the use of particular powers to the promotion of public interests, e.g., the stipulation that private property may be taken only for public uses, or that taxes may be levied solely for public purposes. Finally, under the common law, the powers of municipal corporations are restricted to the accomplishment of purposes of a public or municipal character.

The consequence of the fact that the rule of public purpose has several foundations is that it may have several meanings. Final determination of the meaning of the national Constitution rests with the United States Supreme Court, whereas the controlling interpretation of a state constitution is the one which is adopted by the court of last resort of the state. Even if a given purpose be considered public within the meaning of the Fourteenth Amendment, it may be classified as private, and therefore unconstitutional, under the due process clause of a state constitution.

If the conception of a public purpose be narrower under a state constitution than under the Federal, the municipalities of the state in question suffer

<sup>48</sup> *Loughlin v. Portland*, 111 Maine 486, 90 Atl. 318 at 323 (1914).

the legal consequences. If it be broader, they fail to benefit therefrom because in that event litigants raising the question of private purpose base their case on the Fourteenth Amendment as interpreted by the Supreme Court of the United States.

**Summary.** As the foregoing discussion has disclosed, the legal pitfalls to be avoided by municipal corporations are numerous. To summarize, the power to deal with a certain subject must have been delegated either expressly or by necessary and fair implication, and the exercise of a delegated power is subject to a variety of restrictions. These include the following requirements: (1) municipal regulations must not conflict with superior grades of law, such as the national and state constitutions, national and state laws, and the provisions of the city's charter; (2) powers must be exercised in a reasonable manner and in such a way as to avoid undue restraints on trade, arbitrary discriminations, and abuses of discretion involving fraud, corruption, and bad faith; (3) ordinances must be definite and certain in their provisions; (4) municipal powers may not be surrendered or delegated to private persons or agencies, and discretionary, as distinguished from ministerial, powers must be exercised by the officials on whom they are conferred; and (5) municipal powers may be exercised only for the attainment of public purposes. Although doubts concerning the possession of power are resolved against municipal corporations, the courts presume that delegated powers have been exercised in a valid manner until the contrary is proved.

#### THE POWERS OF MUNICIPAL OFFICERS

A municipal corporation can act only through its officers and agents, such as the council, the mayor, the directors of departments and the like. The more important municipal offices usually are created by charter or statutory provision, and those of lesser importance by ordinance adopted by the city's legislative organ in pursuance of authority conferred on it. Ordinarily, the council is expressly authorized to create such offices and positions as may prove necessary and to fix the compensation or salary attached thereto.

The creation of offices and positions necessarily involves the definition of their powers and duties, and there probably is no more important problem to be solved in the establishment of a governmental system than the proper distribution of power among the various organs or agencies of government. The different forms of city government are considered in subsequent chapters. In the following paragraphs, discussion is limited to a brief review of the controlling legal principles with respect to the powers and duties of particular officers and departments. These principles are substantially the same as those relating to the powers of municipal corporations.

In the first place, municipal officers possess only such powers as have been granted to them either expressly or by necessary implication according to the terms of the city's charter, applicable laws, or ordinances enacted by the city council. Secondly, under the rule of strict construction, doubts

regarding the possession of a power are resolved against the officer claiming it. Third, officers must exercise their granted powers in conformity to applicable laws and may not delegate powers involving the exercise of judgment and discretion. Fourth, although ministerial powers may be delegated, an officer may not employ subordinates to assist him in the performance of his public duties unless authorized to do so by law. Fifth, officials must exercise their powers in a reasonable manner without abuse of discretion and may be compelled to perform imperative, non-discretionary duties. Sixth, if a power be conferred on a municipal corporation without designation of the officer by whom it is to be exercised, the general rule is that the power may be exercised only by the legislative organ of the city, i. e., the council, which is considered to be the general agent of the municipality. Finally, the rule that municipal powers may be utilized only for public purposes and may not be surrendered to private persons applies to the officers and agents through whom municipal corporations must necessarily act.

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## CHAPTER V

### THE LIABILITIES OF MUNICIPAL CORPORATIONS

#### *Outline*

#### **Liability on Contracts**

##### **Controlling Principles**

##### **Requirements of a Valid Contract**

##### **Rights of Parties to Valid and Invalid Contracts**

#### **Liability in Tort**

##### **Controlling Rules of Common Law**

- (1) Governmental-Corporate Rule
- (2) Discretionary-Ministerial Rule
- (3) Relation Between the Governmental-Corporate and Discretionary-Ministerial Rules
- (4) Liability in Connection with Particular Functions

##### **Other Common Law Rules Determinative of Liability**

- (1) Rule of "Respondeat Superior"
- (2) Non-Liability in the Case of "Ultra Vires" Acts
- (3) Non-Liability for Consequential Injuries
- (4) Types of Acts Giving Rise to Liability
- (5) Exceptions to the General Rule of Non-Liability in the Performance of Governmental Functions

##### **Recapitulation of Common Law Rules**

##### **Statutory Imposition of Liability**

##### **Appraisal of the Prevailing Policy Regarding Tort Liability**

AN IMPORTANT branch of the law of municipal corporations pertains to their liability on contracts and for torts. Unlike the national government and the states, municipalities are denied a general immunity from liability. They may be sued without their consent in order to compel fulfillment of their legal responsibilities. If cities fail to abide by their contractual obligations, legal remedies are available to the parties whose contractual rights have been violated, and if the acts of cities result in injury to persons and property, damages may be recovered in certain classes of cases. The extent of the legal liabilities of cities depends partly on the rules of common law and partly on constitutional and statutory provisions. It varies from state to state. The discussion which follows will be confined for the most part to a consideration of the controlling common law principles.

#### **LIABILITY ON CONTRACTS**

As a means of attaining the ends for which they have been created, municipal corporations often enter into contracts with private persons or cor-



porations under which mutual rights and duties are established. These contracts pertain to a great variety of matters, including the purchase of supplies and materials, the furnishing of personal services, the construction of public works, and the rendition of such important public services as transportation, the collection and disposal of wastes, or the furnishing of electric light and power. Whatever the character of the contract to which a municipal corporation is a party, there always is the possibility that controversy concerning its performance may result in legal proceedings in which the municipal corporation may be either the plaintiff or the defendant.

**Controlling Principles.** Generally speaking, actions by or against cities are governed by the same rules which apply to proceedings between private parties. This is the case with respect to suits relating to contracts. The controlling principle is that municipal corporations are bound by valid contracts to which they are parties in the same manner and to the same extent as private corporations or individuals. It is necessary, therefore, to consider the criteria applied by the courts in deciding whether a particular contract is valid.

**Requirements of a Valid Contract.** The chief requirements of a valid contract are four in number. First, the contract must fall within the scope of power delegated to the municipal corporation. The power to enter into it must have been granted either expressly or by implication. Second, the contract must have been entered into by the proper officer, board or other agent of the municipality. Thus, if the power to make contracts be conferred on the council, it may not be exercised by the mayor or the head of a department. Third, the contract must have been made in accordance with the procedure prescribed by charter or statutory provision, provided that the stipulations regarding method are mandatory, rather than directory, in character. Typical requirements as to method are that contracts must be authorized by ordinance or by resolution, that competitive bidding is necessary before awarding them, and that contracts must be awarded to the lowest responsible bidder. Fourth, the contract must be properly evidenced by meeting all legal requirements as to form and content. Among the formalities frequently required are an agreement in writing which is signed and countersigned by designated officers.

**Rights of Parties to Valid and Invalid Contracts.** A municipal corporation, being bound by valid contracts to which it is party, may be sued for violating them. The remedies available to parties whose contractual rights have been infringed are substantially the same as those which may be resorted to against private persons or corporations. Suit may be instituted to recover the amount due on a contract or to obtain damages for a breach thereof. In some cases, if the remedies at law prove inadequate, a suit in equity for specific performance may be brought.

Invalid contracts are unenforceable. If they were enforceable, the limitations on the power of municipalities to contract would be rendered mean-

ingless and the interests of the public would be inadequately protected against abuses. The courts assume full knowledge of the law on the part of those who contract with cities and ordinarily take the position that a person entering into an invalid contract must suffer the consequences of his own ignorance. However, this general rule has its exceptions. The extent of municipal liability with respect to invalid contracts will be considered briefly in relation to the four essentials of a valid contract.

An *ultra vires* contract is one which falls outside the competence of a municipal corporation, either because the necessary power has not been delegated or by reason of an express or implied prohibition. Being void for want of power, such a contract has no binding effect unless subsequently ratified by the state legislature. The weight of authority supports the proposition that even if an *ultra vires* contract has been wholly or partly executed, there can be no recovery against the municipality for benefits received by it. A recognized exception to the general rule is that a municipal corporation cannot invoke the doctrine of *ultra vires* to evade liability to refund money or restore property which it has received.

A contract may be invalid merely because it was made by the wrong officer or agent. In that event, an express act of ratification by the proper authority validates the contract; or if that does not occur, the subsequent conduct of the municipal corporation may be such as to estop it from raising the question of validity. Moreover, acceptance of benefits frequently is held either to constitute ratification or to create an implied contract under which the municipality may be held liable for the value of benefits knowingly received.

If the invalidity of a contract is due to improper procedure or form, the allowance of recovery for property delivered or services rendered seems to depend on the character and the importance of the irregularities. If mandatory provisions intended to safeguard the interests of the city and its taxpayers have been disregarded, the usual ruling is that there can be no recovery. In some jurisdictions, it is considered unjust to permit retention of benefits without payment of compensation. Consequently, recovery is allowed under the doctrines of implied contract, estoppel or, sometimes, ratification.

Conflicting decisions preclude precise statements regarding the extent of municipal liability in connection with invalid contracts. Although the courts adhere quite strictly to the rule of non-liability with respect to *ultra vires* contracts, liability for benefits received is likely to be recognized on one ground or another, if the illegality of contracts is due solely to irregularities in form or procedure or to lack of authority on the part of the officer or agent making them. Conflict in the decisions may be attributed in part to the fact that the courts are confronted with two considerations, viz., the necessity of preventing illegal use of the power to contract and the desirability of doing justice to persons who have contracted with cities by relaxing the rigor of the rule that a party who enters into a contract must suffer the consequences of a lack of knowledge of the law.

## LIABILITY IN TORT

A question of major importance in a society marked by the steady growth of governmental activities is the degree of legal responsibility for injuries to persons and property resulting from the performance of public services. The injuries referred to belong to the general class of private wrongs which are known as torts, i.e., infringements of private rights which are not derived from contracts. Some injuries are the *necessary consequence* of governmental action, whereas others are due to failure to act, negligence in the performance of acts, the creation and maintenance of a nuisance, or intentional trespass.

The national government and the states are not liable in tort unless liability has been self-imposed. Municipal corporations, on the other hand, are compelled to pay damages in certain classes of cases regardless of their wishes in the matter. Since cities are creatures of the state, legally speaking, the state may impose as much or as little liability on them as it deems expedient. In recent years, there has been a marked tendency toward the imposition of liability by constitutional or statutory provision, especially the latter.

Apart from the written law, municipal liability is determined according to common law rules. These are difficult to summarize because of variations from state to state and even within a particular state from time to time. Examination of the numerous cases which have been decided reveals disagreement with respect to controlling principles and even greater differences of opinion concerning their proper application. It is virtually impossible to make generalizations to which exceptions may not be found.

**Controlling Rules of Common Law.** Under the rules of common law, the primary test which is applied in settling the question of liability is the *capacity* in which a municipal corporation was acting at the time injury was inflicted. If functioning in a *corporate* capacity, the municipality may be held liable for damages, but if exercising powers of a *governmental* nature, immunity from liability ordinarily is the rule.<sup>1</sup>

According to a second guiding principle, a municipality is exempt from liability in the exercise of powers which are *legislative, judicial, or discretionary* in character, as distinguished from those which are *absolute, imperative, or ministerial*. These two rules, together with others of a supplementary nature, determine liability in particular cases.

(1) **Governmental-Corporate Rule.** Inasmuch as the outcome of suits for damages depends largely on the capacity in which a municipality was acting when a tort was committed, the distinction between governmental and corporate functions is a matter of primary significance. Broadly speaking, the differentiation corresponds to the dual rôle of municipal corporations as agents of the state and as organs for the satisfaction of local needs.

<sup>1</sup> The terms "public" and "governmental" are used interchangeably. Terms which commonly are substituted for the word "corporate" are "business", "proprietary", and "private."

Ordinarily, immunity from liability prevails with respect to functions classified as governmental or public. Action in a governmental capacity occurs when a municipality exercises the police power, deals with a matter of concern to the state at large, discharges duties for the benefit of the general as distinguished from the local public, e.g., the protection of health and property, or performs gratuitously a service of such a character as to be included within the broad legal meaning of the term "charitable." These various expressions frequently are used by judges in the attempt to define governmental functions. They are by no means mutually exclusive.

Examples of governmental functions are police protection, fire fighting, the conservation of public health, and traffic regulation. In *Steele v. McKeesport*,<sup>2</sup> a person was injured by driving into a rope which policemen had stretched across a street to protect a crowd of people from anticipated danger. The rope should have been removed after the crowd had dispersed and the danger had passed, but the court refused to grant damages on the ground that cities are not liable for the negligent acts of policemen in the performance of services of a governmental character.

In another case, *Wyatt v. Rome*,<sup>3</sup> damages were denied to a person who contracted blood poisoning from a compulsory vaccination performed by a physician employed by the city. The decision was based on the governmental character of the health function.

Again, on the ground that a city acts in a governmental capacity in providing fire protection, a father was unable to obtain compensation for the death of his son who was run down and killed by a motor-driven fire ladder truck. The truck was responding to a fire alarm.<sup>4</sup>

In the field of traffic regulation, no recovery was allowed in a case in which death and serious injuries resulted from the faulty operation of an automatic signal system at a street intersection. The lights showed green in all directions. Although the city had known of the defective condition for several days, immunity from liability was based on the governmental character of the function of traffic regulation.<sup>5</sup>

Generally speaking, the only legal remedy available to persons suffering injury at the hands of municipalities in the discharge of governmental functions lies in a suit against the officer or agent who committed the tort. In view of the limited financial resources of the great majority of officials and employees, their personal liability carries little significance from the standpoint of individuals whose rights undergo infringement. Even if this were not the case, it manifestly is unfair to place sole responsibility for wrongful acts on the servants of the public. Nevertheless, subject to certain exceptions which will be considered subsequently, that is the established policy in connection with governmental functions.

Liability on the part of municipal corporations is recognized in the discharge of corporate or private functions. Action in a corporate capacity

<sup>2</sup> 298 Pa. 116, 148 Atl. 53 (1929).

<sup>3</sup> 105 Ga. 312, 31 S. E. 188 (1898).

<sup>4</sup> *Devers v. Scranton*, 308 Pa. 13, 161 Atl. 540 (1932).

<sup>5</sup> *Vickers v. Camden*, 122 N. J. L. 14, 3 Atl. (2nd) 613 (1939).

occurs when an activity is undertaken for the peculiar benefit of a municipal corporation in its local and special interest, i.e., for the particular advantage and benefit of its inhabitants; or when the service rendered is one of a business character such as ordinarily is carried on by individuals or private corporations; or when a business or commercial revenue is derived or intended to be derived from the performance of the function causing injury.

Judicial opinion varies concerning the weight to be attached to derivation of income. An incidental revenue often is gained in the performance of governmental functions, but as a rule the fact that certain services give rise to income is insufficient in itself to place them in the corporate category and to create liability.<sup>6</sup> Generally speaking, it seems that if an activity is on the borderline between governmental and corporate functions, the fact that an income arises from charges made in connection therewith may prove the decisive factor in assigning the activity to the category of functions with respect to which liability is recognized.

Examples of functions which have been classified as corporate are the ownership and operation of water supply systems, electric light and power plants, and airports.<sup>7</sup> Thus cities have been obliged to grant compensation for injuries to property caused by the bursting of water mains which were negligently constructed; for the death of a person resulting from the negligence of a municipal electric light company;<sup>8</sup> and for the ruination of a crop of beans due to an increased flow of surface water upon a field as a consequence of the arrangements made for the draining of a municipal airport.<sup>9</sup>

The criteria for determining whether a city is acting in a public or a private capacity lack precision. Consequently, application of the governmental-corporate rule by the tribunals of 48 states has resulted in conflicting decisions. Attempts to establish general tests having proved rather futile, the courts dispose of particular cases as best they can by considering relevant legislation, guiding principles, pertinent authorities and, to some extent, the demands of justice. The situation with respect to tort liability in connection with particular municipal functions will be reviewed after consideration of the discretionary-ministerial rule.

**(2) Discretionary-Ministerial Rule.** A basic rule in all of the states is that a municipality is not liable to damages for failure to exercise, or for the manner in which it exercises, powers of a discretionary character. However, municipalities may be held liable for injuries attributable to the non-performance or to the method of performance of ministerial acts.

Cities often have been sued for damages on the ground that failure to act has been the cause of injury, but the courts have held consistently that no liability arises from failure to exercise discretionary powers. For example,

<sup>6</sup> However, in *Foss v. City of Lansing*, 237 Mich. 633, 212 N. W. 952 (1927), the court held that in Michigan a municipality engaged in a governmental work with an incidental profit is liable the same as a private corporation would be.

<sup>7</sup> In some jurisdictions the operation of airports is considered a governmental function.

<sup>8</sup> *Hodgins v. Bay City*, 156 Mich. 687, 121 N. W. 274 (1909).

<sup>9</sup> *City of Mobile et al. v. Lartigue*, 23 Ala. App. 479, 127 So. 257 (1930).

in the case of *Smith v. Selinsgrove Borough*,<sup>10</sup> a child was bitten by a dog suffering from rabies and suit was brought for negligence in failing to pass an ordinance prohibiting dogs from running at large. The borough authorities had known of the presence of mad dogs in the community a few months before the child was attacked, but the court denied the liability of the borough on the ground that the power to enact such an ordinance was discretionary. Most of the powers granted to cities are permissive in character and need to be exercised only if the proper municipal authorities deem the use of power expedient.

The effective enforcement of an adopted policy likewise is a discretionary matter. Consequently, municipalities are exempt from liability because of failure to enforce an ordinance or because of indifferent and ineffective enforcement. Accordingly, in the *Smith* case, the plaintiff could not have recovered damages even if there had been an ordinance which prohibited dogs from running at large. The reason for the rule of non-liability in cases of this type is the virtual impossibility of preventing all persons from violating the law.

An exercise of discretion also is involved in the choice of means for the attainment of desired ends, in the weighing of evidence as a basis for decision, and in the formulation of policy when positive action is taken. Whether the action under consideration be legislative, judicial, executive, or administrative in character, the power exercised is discretionary if the official to whom it is entrusted is free to select one of two or more ways of acting. The choice made is a matter of judgment. For instance, in deciding to construct a given public improvement and in adopting a plan therefor, a discretionary power is exercised, whereas in actually constructing the said improvement in conformity to the selected plan and in maintaining it in proper condition and making repairs, the power exercised is ministerial or non-discretionary in nature.

The distinction between discretionary and ministerial powers is the cause of considerable confusion in liability cases. Precise tests for differentiating between these types of power are lacking. Moreover, various criteria are applied by the courts. A ministerial power sometimes is described as a definite duty which is imperative in character in that the officials who are empowered to act may be compelled to perform it. Duties frequently are imposed by law on municipalities. Examples are mandatory requirements to render a certain service or to do a particular thing in a prescribed manner. The question arises as to whether every imposed duty is ministerial in character.

Some courts distinguish between imposed duties which involve the exercise of discretion in their performance and those which are strictly non-discretionary, absolute, or imperative. Other courts apparently consider all imposed duties to be ministerial within the meaning of the rule under consideration. Since liability for damages may depend on the position which is taken, this difference in attitude is a matter of major significance.

<sup>10</sup> 199 Pa. 615, 49 Atl. 213 (1901).

(3) **Relation Between the Governmental-Corporate and Discretionary-Ministerial Rules.** The relation between the discretionary-ministerial and governmental-corporate rules is marked by uncertainty because of conflicting court decisions and confusing judicial statements. Some tribunals have held that failure to perform or wrongdoing in the performance of mandatory or imperative duties gives rise to liability, regardless of the classification of particular services as either governmental or corporate in nature. However, the weight of authority supports the position that the governmental-corporate test is to be given controlling consideration and that the discretionary-ministerial rule is merely supplementary and subordinate. This position is based on the opinion that the imposition of an imperative duty and the ministerial character of an act are improper criteria for determining whether a city is acting as an agent of the state.

The argument has merits. If municipalities are to be held liable for failure to perform or for negligence in the performance of imperative duties related to functions usually classified as governmental, liability should be based on the ground that imposition of a duty by law constitutes an implied statutory liability. This explanation has been offered by some courts.<sup>11</sup> Imposition of a duty is accepted as evidence of legislative intention to impose liability.

The discretionary ministerial rule undoubtedly modifies the general rule that municipal corporations are liable for torts committed by their officers and agents in the discharge of corporate functions. Even if a municipality be acting in a corporate capacity according to the functional test, it enjoys immunity from liability for the failure to exercise or for the manner in which it exercises discretionary power.

The discretionary-ministerial rule also is controlling in those exceptional instances in which, on one ground or another, liability has been established in connection with functions which have been classified as governmental. As a rule a city's immunity from liability in the performance of governmental functions extends to all acts, whether discretionary or ministerial.

A statement which harmonizes with practically all court decisions in liability cases is that the discretionary-ministerial rule is applied in determining liability for injuries caused by activities, whether governmental or corporate, which are included within the category of functions with respect to which the principle of liability has become established for some reason or other.

(4) **Liability in Connection With Particular Functions.** The non-liability of municipal corporations for the tortious acts of officers and employees engaged in the performance of certain functions is so well established that decisions to the contrary are exceptional. Functions which have been placed in the governmental category by the courts of practically all of the states include police protection; fire fighting and prevention; the conservation of public health; the operation of hospitals; poor relief; the provision

<sup>11</sup> *City of Wooster v. Arbenz*, 116 Ohio St. 281, 156 N. E. 210 (1927); *Brunacci v. Plains Township*, 315 Pa. 391, 173 Atl. 329 (1934).

and management of jails, workhouses, and other penal institutions; public education; traffic regulation; the conduct of elections; the collection of taxes; and building inspection. In a substantial majority of the states, too, the list includes the lighting of streets, street cleaning, the collection and disposal of garbage, ashes, and rubbish, and the ownership and management of buildings which are devoted exclusively to public use, e.g., city halls and police stations.

The courts have been equally consistent in classifying a considerable number of other functions as corporate or private in character and in enforcing municipal liability in connection therewith. This classification comprises municipally-owned and operated waterworks, electric light and power plants, gas plants, wharves and piers, markets, mass transportation facilities such as street railways, subways, bus lines, and ferries, and other enterprises which are conducted for "profit." Municipal airports, asphalt plants, quarries, and cemeteries have been assigned to the same category in many states.

With respect to a substantial number of other important municipal activities, judicial opinion differs considerably concerning the capacity in which a city acts. Moreover, as will be demonstrated below, the classification which happens to have been adopted is not necessarily determinative of liability or non-liability. This list of functions includes the construction, maintenance, and repair of streets, sidewalks, and bridges; the construction and maintenance of sewers, drains and other public improvements; and the ownership and management of parks, playgrounds, swimming pools, bathing beaches, golf courses and similar recreational facilities. Disagreement also is common concerning the capacity in which a municipality acts as the owner and manager of real property, including public buildings of various types. Each of the above activities has been classified as governmental in some states and as corporate in others.

Although the courts are divided as to the governmental or corporate character of the function of constructing and maintaining streets, alleys, bridges, and sidewalks in good condition, cities are held liable for injuries in practically all jurisdictions. It is chiefly in the New England states and in a few others that the common law rule is one of non-liability.<sup>12</sup> Many of the states in which liability is enforced classify the function as governmental, but refuse to apply the doctrine of immunity from liability for various reasons. Accordingly, the question of liability is settled by invoking the discretionary-ministerial rule.

Whatever the basis of liability, cities are held liable in most states for injuries due to negligent construction or to failure to exercise ordinary care in keeping streets, highways, street crossings, sidewalks, and bridges in a reasonably safe condition for public use. Representative illustrations of the circumstances under which damages may be collected are the following: failure to provide danger lights in connection with street excavations; accidents caused by a defect in pavement; obstructions like mortar boxes left in the streets, etc.

<sup>12</sup> In most of the states in this group liability has been imposed by statute.



The fact that a defect or obstruction is due to the acts of persons who are neither representatives nor employees of a municipality fails to relieve it from liability if it had actual or constructive notice thereof. Ordinarily, a municipality is held to have had constructive notice of defects in public thoroughfares only when these could have been seen by one of its officers in the exercise of reasonable supervision, and not if the defects were so slight as to escape the attention of pedestrians.

Injuries often are suffered because of snow and ice on streets. In such cases, municipal liability depends on whether the city has exercised reasonable care and diligence in keeping its streets reasonably safe for travelers who are duly careful. A municipality cannot prevent the general slipperiness of its streets caused by ice and snow, but it can prevent accumulations of snow and ice in the shape of ridges and hills which render passage dangerous.

In the matter of sewerage and drainage, as in the case of streets, the liability of municipal corporations does not necessarily correspond to the conclusions drawn with respect to the governmental or corporate nature of these functions. For one reason or another, liability is recognized in most of the states and controlling force is given to the discretionary-ministerial rule. The general principle is that municipalities are exempt from liability for failure to provide sewers, gutters, culverts, and drains, or for the inadequacy of those provided, but that they may be held responsible for injuries which result from carelessness in constructing or repairing such works or from failure to keep them in good condition and free from obstructions.

Generally speaking, the rule that a municipality is not liable for the non-exercise of, or the manner in which it exercises, its discretionary powers accounts for immunity from liability in connection with determination of the need for a public improvement and the selection and adoption of the plan which is to be followed. In some states, however, an exception is recognized if a faulty plan is so defective that its adoption constitutes an act of negligence. Liability usually is imposed for negligence in the execution of a plan and in the repair and maintenance of an improvement.

If, as frequently is the case, the work of constructing and repairing public works is performed by private contractors, the question arises as to whether the municipality for which the work is being done is liable for inflicted injuries. The prevailing rule appears to be that a municipal corporation is liable for the torts of an independent contractor only if the work remains under the direction and control of the municipal authorities or if the work is intrinsically dangerous. However, the delegation of work to a contractor fails to relieve a municipality of its responsibility for the discharge of an imperative duty, such as keeping streets in a reasonably safe condition for public use.

The courts of a majority of the states still adhere to the view that the ownership and operation of parks and playgrounds is a governmental function and that the rule of non-liability applies. Consequently, if a child is injured or killed because of the defective condition of a swing, slide or other

apparatus for amusement, no damages can be recovered from the city in many jurisdictions.<sup>13</sup> However, a substantial minority of the states enforce liability on the ground that the function is corporate in character.<sup>14</sup> This minority has become larger in recent years and its point of view seems likely to prevail in the future. In some of the states maintaining the majority position, an exception to the general rule of non-liability long has been recognized with respect to injuries caused by defective parkways and paths, on the ground that a city's responsibilities for unsafe streets and alleys extend to public ways located in parks.

It is hazardous to generalize regarding the extent and basis of responsibility for injuries received in or about public buildings. In most states, the determining factor seems to be the character of the use to which a building is devoted. If used exclusively for governmental purposes, there is no liability, but if the use is corporate or proprietary, liability is recognized. In some states, however, as in Pennsylvania, damages have been allowed for injuries caused by the *defective condition* of buildings, whether or not devoted to governmental uses; and in a number of states, liability has been enforced because income was derived from the operation of a building, even though it was utilized primarily for governmental purposes.

A comparatively recent Pennsylvania case<sup>15</sup> affords an excellent illustration of the perplexities arising from the practice of distinguishing between governmental and corporate functions. It also demonstrates that in Pennsylvania recovery of damages for injuries received in public buildings may depend on the governmental-corporate test, if injury is due to *mismanagement* rather than to the defective condition of a building.

Helen Bell, who entered a building jointly owned and occupied by Pittsburgh and Allegheny County, was injured as a result of the negligent operation of a county elevator by a county employee. She was on her way to the public welfare department of the city. The building housed the various county offices, the courts of common pleas, and such city offices as those of the mayor, the treasurer, the departments of police, public safety, health, and welfare, the water bureau, and all revenue-producing bureaus. Part of the building was rented to private enterprises, including a cigar stand, public telephones, and a tunnel under the building. The Supreme Court of the state upheld an award of damages to the plaintiff on the ground that when a county and a city jointly own and occupy a building for governmental and business purposes, the fact that some of the activities centered in the building are exclusively of a purely governmental nature will not affect liability for negligence when joined with business activities. According to the court, the city and the county engaged in a business enterprise in leasing a part of the structure to private interests and in combining their own interests so as to reduce the costs of governmental operation.

<sup>13</sup> *Pohland v. City of Sheboygan*, 251 Wis. 20, 27 N. W. 2d 736 (1947); *Stuwer v. City of Auburn*, 171 Wash. 76, 17 Pac. (2d) 614 (1932).

<sup>14</sup> *Augustine v. Town of Brant*, 249 N. Y. 188, 163 N. E. 732 (1928); *Fehrs v. McKeesport*, 318 Pa. 279, 178 Atl. 380 (1935); *Paraska v. Scranton*, 313 Pa. 227, 169 Atl. 434 (1934).

<sup>15</sup> *Bell v. Pittsburgh*, 297 Pa. 185, 146 Atl. 567 (1929).

**Other Common Law Rules Determinative of Liability.** Although the governmental-corporate and discretionary-ministerial rules are fundamental in importance, other rules have a bearing on the tort liability of municipal corporations. Consideration also is given to the following questions: (1) Was the officer or employee involved in the infliction of injury an agent of the municipality?; (2) was the act within the scope of power of the municipality, and, if so, was the agent or servant of the municipality authorized to perform it?; (3) was the injury the necessary consequence of governmental action, or was it due to negligence, wilful and malicious action, intentional trespass, conversion, or the creation and maintenance of a nuisance?; (4) was there negligence on the part of the injured person?; and (5) if the city was acting in a governmental capacity, is it nevertheless liable under the several exceptions to the general rule of non-liability in the performance of governmental functions? The controlling principles with respect to each of these questions will be considered in turn.

(1) **Rule of "Respondeat Superior."** Under the rule of *respondeat superior*, municipal corporations are responsible only for the acts of officers and employees with respect to whom the relation of master and servant exists. Consequently, regardless of other considerations, damages cannot be recovered against a city for the tortious acts of those who are not its servants.

Although there seems to be no precise test for determining the existence of the master and servant relationship in cases involving municipalities, great weight ordinarily is attached to possession of the right to control the person who committed the wrongful act. Consideration is given by some courts to the character of the work done and its relation to the city, to whether the duty in question was imposed on the city, and to the source of the officer's authority. The method of appointment and the source of compensation seem to be of little or no significance, whereas the right to discharge or remove an official may prove conclusive as to existence of the power to control.

It should be noted in this connection that the non-liability of municipalities for the torts of policemen, firemen, and health officers often is based on the ground that they are servants of the state rather than of the cities, in spite of the fact that the latter select, remove, compensate, and control them. The determining factors are the source of the authority of these officials and the governmental character of the functions which they ordinarily perform. Municipalities occasionally have been held liable, however, for the torts of these officers when engaged in work falling within the category of corporate activities.

(2) **Non-Liability in the Case of "Ultra Vires" Acts.** A firmly established rule is that municipal corporations are exempt from liability for damages if the act causing injury lies wholly outside the general or special powers conferred by statute or charter. Lack of power on the part of the corporation relieves it of responsibility, in spite of the fact that an injury

may have been inflicted in the performance of an *ultra vires* act. Furthermore, a city is not held liable for the unauthorized and subsequently unratified actions of its agents or servants, even if the acts fall within the scope of power which it possesses.

(3) **Non-Liability for Consequential Injuries.** At common law, municipalities are immune from liability for injuries which are the direct and necessary consequences of the action causing them. Consequential injuries commonly arise in the construction and repair of public improvements, for instance, in the grading of streets, in the paving and curbing of streets, or in the construction of sewers. Thus the grading of a street may raise its level above that of adjacent property and compel owners to alter their driveways. Although no recovery is allowed under the rules of common law, liability usually is imposed by constitutional or statutory provision, with the consequence that adequate compensation may be obtained by the owners of property which has been damaged.

(4) **Types of Acts Giving Rise to Liability.** Subject to the several rules previously considered, municipal corporations are liable for injuries caused by intentional trespass, conversion, wilful and malicious wrongdoing, and negligence, i.e., carelessness, on the part of its officers and employees. Moreover, if a municipality creates and maintains a nuisance, it usually is liable for resultant injuries, whether or not it was acting in a governmental capacity. If a claim for damages is based on negligence, the plaintiff must prove that the city was actually negligent. Furthermore, in most states, if it appears that the injured party was guilty of contributory negligence, no recovery against the city is allowed.

(5) **Exceptions to the General Rule of Non-Liability in the Performance of Governmental Functions.** The liability of a municipal corporation for torts may depend on the recognition of exceptions to the general rule of non-liability in the performance of governmental functions. As mentioned in the preceding paragraph, the creation and maintenance of a nuisance by a municipality gives rise to liability for resulting injuries, especially to property, irrespective of the governmental or corporate character of the function involved.<sup>16</sup> Accordingly, cities have been held liable for nuisances created by the maintenance of dumps, the operation of garbage reduction plants and incinerators, the discharge of sewage into a ditch, the operation of sewage treatment plants, the maintenance of a diving board over shallow water,<sup>17</sup> and the cleaning of streets. Although there is difference of judicial opinion as to the governmental or corporate character of these functions, they were classified as governmental in the instances mentioned.

Cities are exempt from liability for injuries resulting from nuisances which other persons have created. Nor are they liable for failure to abate such nuisances. However, liability arises if they permit nuisances to exist on their own property to the damage of others.

<sup>16</sup> *District of Columbia v. Totten*, 5 F (2d) 374 (App. D. C.) 40 A. L. R. 1461 (1924); *Village of Lebanon v. Loop*, Ohio, C. A., Warren County, No. 175 32 N. E. (2nd) 458 (1933).

<sup>17</sup> *Hoffman v. City of Bristol*, 113 Conn. 386, 155 Atl. 499 (1931).

A second exception to the general rule of non-liability when cities act in a governmental capacity is that liability is recognized if injury results from the use of highly and inherently dangerous agents. The fact that such an agent is used in the performance of a governmental function fails to relieve municipalities from responsibility for negligence. They are required to exercise care commensurate with the danger in order to prevent injury to persons or to property.

Thus in *Herron v. Pittsburgh*,<sup>18</sup> action was brought against the city to recover damages for personal injuries sustained by a boy from contact with a live telephone wire used in the police service of the city. It appeared that the break in the wires was known to the police officials within an hour after it occurred and that they also knew that there were other wires carrying high and dangerous voltage in close proximity. Despite the governmental character of the police function, damages were awarded to the plaintiff.

In some states, too, cities are liable for the improper management and use of their real property to the same extent and in the same manner as private corporations and individuals, regardless of the use to which the property is devoted. The courts of most states, however, hold that liability depends on whether property is used for governmental or for corporate purposes. This position is the one most likely to be taken if injuries are due to either the defective condition or the mismanagement of public buildings. As noted above,<sup>19</sup> liability often is recognized in this type of case if the building, even though largely used for governmental purposes, is revenue-producing.

In the minority of states which disregard the use to which property is put, general liability for improper management and use sometimes is based on the ground that the ownership and control of real property is a corporate or proprietary function. However, the decisions and opinions are so conflicting that it is impossible to ascertain a single determining principle. Under the circumstances, the occasional recognition of liability in connection with real property which is used for governmental purposes may be regarded as an exception to the general rule of non-liability in the performance of governmental functions.

As previously stated,<sup>20</sup> in most of the states municipal corporations are liable for negligence in the construction and maintenance of streets, sidewalks, bridges, sewers, drains and similar public works. The courts of some states base liability on the corporate character of these activities, whereas the courts of others consider the functions to be governmental in nature but nevertheless allow the recovery of damages. Various explanations are offered for this departure from the general principle of non-liability in the performance of governmental functions. It has been asserted that this exception to the general rule is based more on long-established precedent than on fixed rules or pure logic. Again, liability has been said to exist because the obligation to repair streets, sidewalks, bridges, and sewers and to main-

<sup>18</sup> 204 Pa. 508, 54 Atl. 311 (1903).

<sup>19</sup> *Supra*, p. 91.

<sup>20</sup> *Supra*, pp. 59-80.

tain them in a reasonably safe and useable condition has been imposed by law and therefore is a ministerial duty. Sometimes, as in Ohio, imposition of the duty has been construed as an indication of legislative intention that cities should be held liable. Whatever the explanation, the important fact is the recognition of liability.

**Recapitulation of Common Law Rules.** To recapitulate, municipal corporations enjoy immunity from liability at common law for torts under any one of the following circumstances: (1) If the municipal corporation was acting in a governmental capacity; (2) if the injury is attributed to the non-exercise or the manner of exercising discretionary powers; (3) if the injury is the necessary consequence of governmental action; (4) if the injured party has been guilty of contributory negligence; (5) if the tortious act is *ultra vires*, i.e., not included within the scope of powers which the corporation possesses; (6) if the injury results from an unauthorized and subsequently unratified act of a municipality's agents, and (7) if the person or persons committing the tort are not the servants or agents of the city.

Municipal corporations may be held liable in damages: (1) for injuries carelessly or intentionally committed in the performance of ministerial acts when acting in a corporate or proprietary capacity; (2) for injuries due to the non-performance of imperative duties when acting in a like capacity, (3) for injuries resulting from nuisances which municipalities have either created and maintained or permitted to exist on their own property, irrespective of the governmental or corporate character of the function involved; (4) for injury due to the careless use of highly and inherently dangerous agents in connection with any city activity; (5) in a limited number of states, for injuries arising from the defective condition or mismanagement of municipally-owned real property, regardless of the purpose to which it is devoted; and (6) in exceptional instances, for injuries caused by the non-performance or negligent performance of ministerial acts in connection with certain governmental functions which, for one reason or another, are excluded from the scope of the general rule of non-liability when cities act in a governmental capacity.

The foregoing summary does not hold true in every respect for all of the 48 states. For instance, in South Carolina, all municipal functions are classified as governmental and the liability of cities depends on statutory provision.<sup>21</sup> Again, in New Jersey, municipalities are not liable for the mere negligence of their employees.<sup>22</sup>

**Statutory Imposition of Liability.** A growing dissatisfaction with the tort liability of municipal corporations under the common law rules has resulted in legislation designed to narrow the field within which immunity is enjoyed. Although the volume of such legislation is comparatively small, important inroads on the common law exemption from liability in the dis-

<sup>21</sup> *Mathewes v. Port Utilities Commission of Charleston, S. C., et al.*, 32 F. (2nd) 913 (D. C. S. C.) (1929); *Dunn v. Barnwell*, 43 S. C. 396, 21 S. E. 315 (1895).

<sup>22</sup> *Florio et al. v. Mayor and Aldermen of Jersey City*, 101 N. J. L. 535, 129 Atl. 470 (1925).

charge of governmental functions have been made, e.g., in Michigan and New York. The outlook for the future seems promising. Since the chief basis of non-liability is the doctrine that cities act as agents of the state in carrying on various activities, imposition of liability by statutory provision represents a waiver of immunity by the state in favor of persons suffering injury. So far, however, no state has assumed the resultant financial burden. Cities must pay the damages which may be awarded in particular cases.

In an increasing number of states, cities have been made liable by statute for the damages caused by the negligence of their officers and employees in the operation of motor vehicles in connection with the performance of their duties. Under common law rules, non-liability exists if the operator is a policeman, fireman, or other officer engaged in the discharge of a governmental function. The statutes mentioned usually are so worded as to include officers and employees of every description regardless of the character of their employment. In view of the extensive use of motor vehicles by all city departments, statutory imposition of liability for negligent operation is by no means an idle gesture.

Liability likewise has been established by statutory provision in one or more states for injuries resulting from the dangerous or defective condition of streets, bridges, sidewalks, and property; for damages to property caused by riots or the destructive acts of mobs; for the destruction of property as a necessary means of preventing the spread of fire or protecting the public health; and for the negligence of officers and employees of fire departments and school districts.

Moreover, liability frequently is imposed by constitutional or statutory provision for consequential injuries in connection with public improvements. Occasionally, too, cities have been made liable for miscellaneous matters, for instance, failure to keep navigable waters within the city limits open and free from obstructions. In some of the states, statutes of the type indicated have been in effect for many years.

Statutes imposing liability in connection with the activities mentioned above, and others as well, vary greatly in significance. Sometimes liability is established where none existed at common law, but sometimes the effect of legislative action is merely an enlargement or a clarification of common law liability. It should be noted, too, by way of contrast, that the legislatures of some states occasionally have conferred exemptions from, or placed limitations on, the liability of cities at common law. Examples are: the abolition of liability in Montana for accumulations of ice and snow on sidewalks and in streets,<sup>23</sup> and the creation of immunity from liability for airports in Alabama.<sup>24</sup> Whatever the purpose, whether to expand or to contract municipal liability, or merely to regulate matters of procedure, statutory or constitutional provisions supersede conflicting common law rules.

Although the written law is binding on the courts, the usual attitude of

<sup>23</sup> M. E. Hagen, "Liability of a Municipal Corporation for Defective Streets and Sidewalks", *Montana Law Review*, Vol. 7, Spring, 1946, pp. 62-68.

<sup>24</sup> J. F. Murray, "Recent Trends in Municipal Tort Liability", *Legal Notes on Local Government*, Vol. V, No. 6, August, 1944, pp. 353-358.

the judicial branch is that acts of the legislature pertaining to liability should be strictly construed. In other words, statutes are not to be interpreted as imposing liability where none exists at common law, unless it is clearly the intention of the legislature to do so.

On the whole, this attitude probably is unobjectionable, but there have been instances in which the courts seem to have adopted so strict a construction as to defeat a fairly obvious legislative purpose. A case in point was the action of the Pennsylvania Supreme Court in ruling that fire ladder trucks were not motor vehicles within the meaning of a statute imposing liability on counties, cities, boroughs, incorporated towns or townships for damages caused by the negligence of any employee while operating a motor vehicle upon a highway in the course of his employment.<sup>26</sup> Five years later the Pennsylvania legislature expressly imposed liability in connection with the operation of a motor vehicle or *fire department equipment*.<sup>26</sup>

**Appraisal of the Prevailing Policy Regarding Tort Liability.** Any one who undertakes a study of the law relative to the liability of municipal corporations in tort is likely to agree with the observation of a leading authority that the effort to determine the law "resolves itself into a study of local arbitrariness in the different jurisdictions, thereby justifying a challenge against all the formulas, phrases, and terminology under the control of which the courts profess to be acting."<sup>27</sup> The principles which control the disposition of liability cases are difficult to ascertain and more difficult to apply, and, above all, they give rise to results of a questionable character from the standpoint of reasonable standards of justice and sound public policy.

The greater the difficulty in the ascertainment and application of controlling rules of law, the greater the confusion and uncertainty which prevail and the larger the number of conflicting and irreconcilable decisions. An inevitable result is an increase in costly and time-consuming litigation which is detrimental to the interests of all parties concerned, viz., the government, the community and the individual who has suffered injury to person or property by reason of governmental activity. To measure the magnitude of the loss in time, money, effort, and confidence in the judicial process is impossible, but these more or less intangible losses unquestionably occur.

An uncertain body of law may be fairly flexible, but it is doubtful if a flexibility which permits arbitrary decisions is socially desirable. However, the confusion and uncertainty regarding municipal liability in tort should not be over-emphasized. Much of it disappears if attention be concentrated on the law of a particular state and if no attempt be made to reconcile the decisions rendered in 48 different jurisdictions.

The chief grounds for criticism are the shortcomings of the prevailing body of law with respect to the requirements of justice and sound public policy.

<sup>26</sup> *Devers v. Scranton*, *op. cit.* In a similar case, *Bernadine v. City of New York*, 294 N. Y. 361, 62 N. E. (2d) 604 (1945), the court ruled that a police horse was a "facility of transportation."

<sup>27</sup> *Laws of Pennsylvania*, Vol. II, 1937, Act No. 447, Sec. 618.

<sup>28</sup> E. M. Borchard, "Government Liability in Tort", *Yale Law Journal*, Vol. XXXIV, No. 2, November, 1924, p. 129.



Although conceptions of justice vary, there are many persons who consider it unjust and unreasonable to grant damages for an injury due to the negligence of an employee of a municipal light plant and to deny damages in a similar or identical case if injury was caused by the carelessness of a fireman or a policeman.

If a person's leg is broken because the stairs of a public building collapse, it seems absurd that he should be entitled to compensation if the building happened to be part of the equipment of a municipally-owned street railway system, but receive nothing if it were a city hospital, police station, or jail. Why should a city be immune from liability if the failure of its water supply through negligence causes a loss by fire, but be held liable if the same failure results in a different kind of injury to a domestic consumer of water? Certainly, the explanation that liability depends on whether or not the city acts as an agent of the state hardly justifies a policy which works hardship on persons suffering injury through no fault of their own. The question as to why the state should enjoy immunity remains unanswered.

Various reasons for the state's immunity have been advanced. According to one point of view, the state, being sovereign, is above the law. Consequently, its legal responsibilities are necessarily self-imposed and, unless it accepts liability for tortious acts, the courts lack authority to compel it to pay damages. The point has been made that this doctrine is traceable to a misinterpretation of the medieval English maxim that "the King can do no wrong," a maxim which really meant that the king was not privileged to do wrong. This mistaken theory, which was introduced into this country with the common law, has survived because of its antiquity and has been transformed to harmonize with democratic political institutions by substituting the "state" for the "king." Whatever the force of the early English influence, the doctrine of state sovereignty receives the support of an important school of political and juristic theorists. It undoubtedly has been accepted by most members of the legal and judicial professions in the United States. The "sovereignty" argument is unsatisfactory in that it begs the question as to why the state should not assume liability or impose it on cities in the performance of governmental functions.

Some courts account for the immunity of the state on grounds of public policy, asserting without proof that governmental functions cannot be performed properly if liability in tort exists. The argument seems to be that governmental activities are so numerous and various and so different from those of private enterprise that recognition of liability would result in innumerable suits for damages, in fraudulent claims, in the frequent awarding of generous compensation by sympathetic juries, in a heavy burden of taxation, and in a hesitant, timid, and generally ineffective government. Opposition to an extension of municipal liability in tort also is based on anticipation of the same dire consequences. Whether fears of this type are warranted is a question which will be considered below.

There is merit in the contention that the governmental-corporate test should be discarded and that the liability of municipal corporations should

be determined under the discretionary-ministerial and other rules which have been discussed in the preceding pages. From the standpoint of social justice, much would be gained from such a change in policy. At the least, a primary cause of dissatisfaction would be removed and the courts would be relieved of the difficult task of functional classification.

Consideration also might be given to the desirability of recognizing liability for all injuries resulting from the performance of public services, irrespective of negligence or contributory negligence, or for all except those due to the carelessness of the injured party. One suggestion which has been made is that the state legislature should adopt a rule of complete tort liability but limit recovery in tort actions to actual monetary damages.<sup>28</sup> Another proposal is to limit freedom from liability to enforcement of the criminal law and to the legislative function of enacting or failing to enact ordinances.<sup>29</sup>

If injuries are definitely due to governmental activity, it scarcely seems fair that the loss should be borne by the injured person and not by the community which is benefited by the services which are rendered. After all, the principle involved in the assumption of liability by the government, i.e., spreading the burden of loss, is essentially the same as that on which insurance against the sundry hazards of living is based. The community, like the holders of insurance policies, foots the bill for the losses due to the risks involved in the operation of a government.

The financial effects of an extension of liability in tort require careful investigation. Will municipalities, especially the smaller ones, be able to bear the burden of an extended liability, or should the state government share the responsibility of providing the funds needed to pay damages for injuries resulting from the performance of governmental as well as corporate functions? In so far as cities act as agents of the state, an arrangement under which the latter would pay all or part of the cost seems fair enough, but it might lead to a demand that state control over cities be increased. Should a liability fund supported by contributions from both municipalities and the state, or from municipalities only, be established on an actuarial basis? Some such plan of pooling resources seems more satisfactory than the present policy of having each municipality finance the payment of damages awarded against it.<sup>30</sup> Questions of this type, as well as those pertaining to the proper extent of liability, should be raised and answered in the development of a sound policy concerning the responsibilities of municipal corporations in the matter of torts.

To meet the obvious need for pertinent information, the Committee on Public Administration of the Social Science Research Council collaborated about a decade ago with the Committee on Municipal Tort Liability of the American Bar Association, with the Institute of Municipal Law Officers, and with the American Municipal Association in encouraging investigations which would reveal the experiences of particular governmental units under

<sup>28</sup> E. Fuller and A. J. Casner, "Municipal Tort Liability in Operation", *Harvard Law Review*, Vol. LIV, No. 3, January, 1941, pp. 437-462.

<sup>29</sup> "Municipal Tort Liability—A Proposal", *Iowa Law Review*, Vol. 23, March, 1938, pp. 392-401.

<sup>30</sup> A number of municipalities now carry liability insurance with private concerns.

the prevailing rules concerning liability. A monograph reporting the experience of Los Angeles was published to serve as a guide for officials and scholars who might be sufficiently interested in the general problem to undertake similar studies for both large and small cities in the several states.<sup>31</sup> Studies of the same type have been completed for a number of other cities including Boston, Chicago, Austin (Texas), Medford (Massachusetts), and the cities and towns of Virginia.<sup>32</sup>

During the five-year period which was subjected to investigation in the Los Angeles study, 1,458 claims were filed against the city, exclusive of claims against the Department of Water and Power.<sup>33</sup> Of this total, 778 were based on the alleged negligent operation of motor vehicles and 680 were due to injuries attributed to the dangerous and defective conditions of streets, works, and property and to miscellaneous causes. About three-fourths of the claims arose from collisions with automobiles, from street defects and dangers, and from sidewalk defects. The following departments and divisions were most frequently involved: police, public works, street maintenance, refuse disposal, sewer maintenance and parks.

The claims were disposed of in various ways, viz., 60% were rejected by the city and not pressed by the claimants; 22% were settled prior to suit; 17% were sued upon; and 1% did not involve demands for money. Of those sued upon, not including suits pending at the time the study was made, about 51% resulted in judgment for the city, approximately 14% in judgment for the plaintiff, about 23% were settled before judgment, and in the neighborhood of 12% were finally disposed of when suit was dismissed by the plaintiff.<sup>34</sup> There were few instances of "fake injuries" and no evidence of "racketeering" on the part of attorneys in connection with liability claims.

The total sum involved in the 1429 claims for money damages was \$7,-331,598.00. This amount was reduced by \$4,019,150.00 as a result of the rejection of claims which were not pressed. Settlements after commencement of suit amounted to \$31,468.00 and the payments on judgments were \$75,875.00. Thus the city actually paid a total of \$107,343.00 in fulfillment of its legal responsibilities.

This sum represented about 1.5% of the total damages which were claimed and 3.3% of the amount which was demanded in the suits actually filed. Three-fourths of the total was paid in satisfaction of claims which arose from the negligent operation of motor vehicles.

Judging by the results of this study and the others which have been made, the fear that an extension of liability would result in a heavy financial burden seems unfounded. It is true that damage payments probably would be some-

<sup>31</sup> L. T. David and J. F. Feldmeyer, *The Administration of Public Tort Liability in Los Angeles, 1934-1938* (New York, Committee on Public Administration, Social Science Research Council, 1939).

<sup>32</sup> The Virginia results are summarized in G. A. Warp, "Can the King Do No Wrong?", *National Municipal Review*, Vol. XXXI, No. 6, June, 1942, pp. 311-315. See also G. A. Warp, *Municipal Tort Liability in Virginia* (Charlottesville, Bureau of Public Administration, University of Virginia, 1941). The results of the other studies, particularly the experience of Boston, are discussed in E. Fuller and A. J. Casner, *op. cit.*

<sup>33</sup> These claims were excluded because of the difficulty of amassing data.

<sup>34</sup> The proportion of plaintiffs in tort actions who recovered from the city were 40% for Boston, 28% for Los Angeles, 40% for Chicago, 38% for Austin, and 61% for Medford. For these and other statistics see E. Fuller and A. J. Casner, *op. cit.*

what increased. At the same time an incentive for more careful and efficient government would be provided. The negligent performance of governmental functions is costly to a community even if injured individuals are unable to recover damages.

As for the argument that municipalities would become the victims of perpetrators of fraud and that excessive damages would be allowed by sympathetic juries, it may be said that this does not appear to have been the case in the fields of activity within which liability now is recognized. Moreover, effective safeguards against such practices can be established.

Finally, it is unlikely that an extension of liability would result in governmental timidity, hesitation, and ineffectiveness. At present, governmental officials are personally liable for their tortious acts, and this personal liability is more likely to be productive of timidity than the policy of placing responsibility on the community.

Departure from the prevailing rules concerning liability can be accomplished by action of the state legislatures and the courts. Modification of the common law principles through judicial action is necessarily a slow process because of the weight which courts attach to precedent and their reluctance to cast aside the old formulas, phrases, and terminology. Now and then courts have attempted to overthrow traditions of long standing. A case in point is *Fowler v. Cleveland*.<sup>85</sup> In holding the city liable for the negligent operation of a fire-engine, the court discarded the governmental-corporate test. However, several years later, in *Aldrich v. City of Youngstown*,<sup>86</sup> this decision was overruled and the old principles were re-asserted. The Fowler case was exceptional in that the court frankly rejected an old rule, whereas in other cases a desired result has been attained through manipulations supported by specious reasoning.

For example, in *Kaufman v. City of Tallahassee*,<sup>87</sup> the city was held liable for injury inflicted by a trailer attached to a fire truck, partly on the ground that the careless operation of the trailer, as constructed and attached to the truck, constituted the maintenance of a nuisance on the streets, and partly on the ground that the city's council-manager form of government was conclusive evidence of the business character of its activities. In a more recent case arising from the negligent operation of a truck by an employee of the city of Tampa's sewer department, the Florida court based liability on the city's duty to keep streets safe for travel and on the doctrine of negligence in the use of dangerous instrumentalities.<sup>88</sup>

Although the present trend of court decisions in various states is toward an extension of municipal liability, the judicial process of change is extremely slow. Moreover, the matters of policy involved are so many, as previously indicated, that legislative action based on careful consideration of all aspects of the problem seems preferable to reliance on the gradual development of a new policy by the courts. Legislatures are better qualified

<sup>85</sup> 100 Ohio St. 158, 126 N. E. 72 (1919).

<sup>86</sup> 106 Ohio St. 342, 140 N. E. 164 (1932).

<sup>87</sup> 84 Fla. 634, 94 So. 697 (1922).

<sup>88</sup> *City of Tampa v. Easton*, 145 Fla. 188, 198 So. 753 (1940).

than courts for the task of ascertaining the likely effects of a given policy and of determining the most practicable means of financing the payment of money damages.

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## CHAPTER VI

### CITY-STATE RELATIONS: CONSTITUTIONAL RESTRAINTS

#### *Outline*

The Authority of the State Distinguished from that of its Government

City-State Relations as Affected by the Constitution of the United States

City-State Government Relations as Affected by State Constitutions

Effect of Guarantees of Private Rights in State Constitutions

Constitutional Provisions Designed to Protect Municipalities

(1) Doctrine of an Inherent Right of Local Self-Government

(2) History of Legislative Control of Cities

(3) Causes of Excessive Legislative Intervention

(4) Imposition of Constitutional Limitations

(5) Effectiveness of Constitutional Limitations

An Implied Limitation on Legislative Control

BOTH PUBLIC and private corporations are creatures of the state, but the latter enjoy a greater freedom from state control than the former. This situation is due to the differences between the two types of corporation and to the effect of these differences on the application of various constitutional provisions. For instance, the "impairment of contracts" clause of the Constitution of the United States limits state regulation of private corporations because of the judicial ruling that the charters of the latter are contractual in character. Municipal corporations, *as such*, derive no protection against the state from this clause. However, the authority of the state in dealing with municipal corporations, although very great, falls short of being absolute. The law on this subject is marked by many uncertainties which make it difficult to define precisely the permissible extent of state control.

#### THE AUTHORITY OF THE STATE DISTINGUISHED FROM THAT OF ITS GOVERNMENT

A significant differentiation in the field of city-state relations is that between the authority of the state as a body politic and the powers of the various agencies which, collectively, constitute what is known as the "state government." This distinction frequently affords an explanation of the

seemingly contradictory statements of courts in opinions dealing with the subject of state control of municipal corporations.

The authority of the *state* is limited only by the provisions of the national constitution. All of the 48 states possess exactly the same scope of power with respect to municipal corporations. The competence of the *state government*, on the other hand, is subject to the additional restrictions which a particular state sees fit to incorporate in its own constitution. Consequently, the degree to which cities are subservient to the state government varies from state to state. The authority of the state and that of its government in relation to cities are identical only if the state vests all of its powers pertaining to these local units in the latter.

#### CITY-STATE RELATIONS AS AFFECTED BY THE CONSTITUTION OF THE UNITED STATES

The Constitution of the United States reserves to each state the power to establish whatever system of local government it deems expedient. No specific mention of local units is made in the Constitution, but the power neither has been delegated to the United States nor denied to the states. Consequently, in conformity with the principle of the Tenth Amendment, it undoubtedly remains in the hands of the latter. In the exercise of this power the states are obliged to comply with the limitations by which their powers in general are circumscribed. The following paragraphs will be devoted to a consideration of the extent to which state control of municipal corporations is affected by restrictive provisions of the Federal Constitution.

In the first place, a state lacks authority to delegate powers which it does not possess. This limitation on the competence of a state to grant powers to local units of government is a principle of constitutional law so firmly established that it may be described as axiomatic.

Next to be considered is the complicated question of the extent to which the power of the state to interfere in the affairs of municipal corporations is affected by provisions of the United States Constitution designed primarily to prevent state encroachment on the rights of individuals. Of particular importance are the clauses forbidding the states to pass laws impairing the obligation of contracts, to deprive persons of life, liberty, or property without due process of law, and to deny to any persons within their jurisdiction the equal protection of the laws.

Do municipal corporations, *in their own right*, possess any privileges or immunities under the Federal Constitution which may be invoked by them in opposition to the will of their creator, i.e., the state? According to the Supreme Court, the answer to this question is "no."

In *Trenton v. New Jersey*,<sup>1</sup> the city contended that an act of the state legislature violated the contract clause and took property, owned by the city in its proprietary capacity, for public use without just compensation and without due process of law in violation of the Fourteenth Amendment. After

<sup>1</sup>262 U. S. 182 (1923).

referring to the distinction between the governmental and proprietary capacities of municipal corporations, the Court concluded:

But such distinction furnishes no ground for the application of constitutional restraints here sought to be invoked by the City of Trenton against the State of New Jersey. They do not apply as against the State in favor of its own municipalities.<sup>3</sup>

Ten years later in *Williams v. Mayor and City Council of Baltimore*,<sup>4</sup> the Court took the same position with respect to the restrictive effects of the equal protection clause. The opinion includes the unqualified statement that a municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.

These ruling cases warrant the conclusion that municipal corporations, as *legal persons*, possess no rights traceable to the national constitution which restrict the power of the state to control them in various ways. The position of cities, as bodies politic and corporate, is one of complete subordination to the state. It may prescribe their organization, expand or contract their powers, take away their property, and even terminate their existence.

The obligation of the states to respect the rights of *private persons*, both natural and corporate, tempers somewhat their otherwise plenary power to exercise control over municipal corporations. An examination of two classes of cases will indicate in a general way how state control of cities is affected by guarantees of private rights in the Federal Constitution. One group of cases demonstrates that certain claims of right on the part of private persons are ineffective as against the paramount authority of the state over cities. The other shows that under some circumstances the contrary is true.

The first group of cases consists of those in which private persons claim that the creation of a municipal corporation and the granting of powers thereto confer rights upon them, as inhabitants, property owners, and taxpayers, which tie the hands of the state in regulating the municipality thereafter. A clear presentation of the principles of law which control the disposition of this type of case is found in *Hunter v. Pittsburgh*.<sup>5</sup>

This case arose from the consolidation of the cities of Pittsburgh and Allegheny under a procedure prescribed by an Act of the Pennsylvania legislature. Since the method of voting on the question of consolidation permitted the voters of Pittsburgh to outvote those of the smaller city, thereby compelling the union without the consent and against the protest of the latter, the plaintiffs in error (voters, property owners, and taxpayers of Allegheny) claimed that the act of the legislature was unconstitutional. They argued that it violated the obligation of a contract existing between

<sup>3</sup> *Ibid.*, 262 U. S. 182 at 191-192.

<sup>4</sup> 289 U. S. 36 (1933). For a review of the entire question, including a consideration of earlier cases, see E. B. Schulz, "The Effect of the Contract Clause and the Fourteenth Amendment upon the Power of the States to Control Municipal Corporations", *Michigan Law Review*, Vol. 36, No. 3, January, 1933, pp. 385-408, and H. L. McBain, *The Law and Practice of Municipal Home Rule* (New York, Columbia University Press, 1916), pp. 17-29.

<sup>5</sup> 207 U. S. 161 (1907).



them and the city of Allegheny and deprived them of their property without due process of law by subjecting it to the burden of the additional taxation resulting from the consolidation. The Supreme Court, in rejecting both contentions, asserted that the inhabitants and property owners had no right by contract or otherwise in the unaltered or continued existence of the municipal corporation or its powers. Although they might suffer inconvenience by the change and their property might be lessened in value by the burden of increased taxation, there is nothing in the Federal Constitution which protects them from these injurious consequences.

The foregoing case and others<sup>5</sup> have established the general principle that as far as property owners, taxpayers, or residents are concerned, the power of the state to abolish municipal corporations, amend their charters, enlarge or diminish their boundaries, or levy taxes upon them for public purposes is as extensive as its power to create them in the first instance. An exercise of the power of creation does not give rise to rights on the part of property owner, taxpayer, or resident which, under the contract and due process clauses, curtail the power of the state subsequently to control its municipalities.

The second group of cases, all of which involve private contractual rights, falls within the scope of the general rule that contracts between municipal corporations and private persons, like other contracts, are protected from subsequent impairment by state law. A determining factor in these cases is whether the laws under attack provide a remedy for the enforcement of contractual obligations which is substantially equivalent to the redress available when the contracts were made. If all remedy is withdrawn, or if the remedies substituted are less efficacious, more difficult, or less certain, the obligation of the contract is impaired.

As a general proposition, the plenary power of the states to create, divide, consolidate, or abolish municipal corporations, to alter their organization, or to expand or contract their powers cannot be curtailed by contracts entered into with private persons.<sup>6</sup> To this general rule there are the following established exceptions: (1) when the resource for the payment of municipal bonds is the power of taxation existing at the time of issue, the power may not be limited or withdrawn by the state unless adequate means for paying the principal and interest are provided;<sup>7</sup> (2) if a municipality has agreed to issue bonds, repeal of the law authorizing their issue is void if the conditions agreed upon have been either wholly or partly fulfilled by the party to whom the bonds were to be issued.<sup>8</sup>

Although legislative acts abolishing municipal corporations are effective regardless of existing contracts, impairment of the obligation of contracts

<sup>5</sup> See *Houck v. Little River Drainage District*, 239 U. S. 254 (1915); *Soliah v. Heskin*, 222 U. S. 522 (1912); *Kelly v. Pittsburgh*, 104 U. S. 78 (1881); *Louisiana ex rel. Folsom v. New Orleans*, 109 U. S. 285 (1883); and *Ettor v. City of Tacoma*, 228 U. S. 148 (1913).

<sup>6</sup> *Mertwether v. Garrett*, 102 U. S. 472 (1880); *Mobile v. Watson*, 116 U. S. 289 (1886); *Shapleigh v. San Angelo*, 167 U. S. 646 (1897).

<sup>7</sup> *Von Hoffman v. Quincy*, 4 Wall. (71 U. S.) 535 (1866); *Wolf v. New Orleans*, 103 U. S. 358 (1880).

<sup>8</sup> *Red Rock v. Henry*, 106 U. S. 596 (1882); *County of Clay v. Society for Savings*, 104 U. S. 579 (1881).

is avoided by application of several rules which have received judicial sanction. First, the property of an extinct municipal corporation which is not held in trust either for the public or for a private charity may be applied in satisfaction of its debts. Second, the remedies that were available to the creditors and other obligees of a dissolved municipal corporation may be resorted to against its successors. Finally, the detachment of territory from a municipal corporation does not relieve it of obligations previously incurred, unless other arrangements for their fulfillment have been made by the legislature. If the aforementioned remedies are unavailable in a given situation, the only remaining remedy is an appeal to the legislature.<sup>9</sup>

Other types of legislative interference with contracts to which municipal corporations are parties also may be declared unconstitutional under the contract clause. A typical case is *Superior Water, Light, and Power Co. v. Superior*.<sup>10</sup> The Court held that under the contract clause of the Federal Constitution, a state cannot substitute an indeterminate permit to supply a municipality with water for a clear contract between the municipality and the supply company giving the latter an exclusive right to furnish such supply for a definite time and obligating the former to purchase the system at the expiration thereof for a specified price.

As already pointed out, municipal corporations enjoy no rights under the Constitution of the United States which prevent the states from taking away their property without compensation, placing it under the control of other public agencies, and assigning it to other public uses. However, the states lack authority to convey such property without consideration to private persons for strictly private purposes,<sup>11</sup> or to provide for a disposition of municipal property or funds in a manner inconsistent with the terms of a grant, donation, or dedication by an individual or a private corporation. But again, these restraints on the states are traceable to the possession of constitutional rights by private persons rather than by municipalities.

A summary statement concerning the general effect of the Constitution of the United States on city-state relations is in order. Among the powers reserved to the states is that of establishing a system of local government. In exercising this power, the states are obliged to remain within the limits of their general competence as determined by the Constitution. Indirectly, by reason of necessity of respecting the constitutional rights of private persons, particularly under the contract and due process clauses, state control over local units, including cities, is limited in certain respects. For all practical purposes, however, the state may deal with municipal corporations

<sup>9</sup> *Mertwether v. Garrett*, 102 U. S. 472 (1880); *Shapleigh v. City of San Angelo*, 167 U. S. 648 (1897); *Comms. of Laramie County v. Comms. of Albany County*, 92 U. S. 307 (1875); *Mount Pleasant v. Beckwith*, 100 U. S. 514 (1879); *Barkley v. Levee Commissioners*, 93 U. S. 258 (1876).

<sup>10</sup> 263 U. S. 125 (1923). See also *St. Cloud Public Service Co. v. St. Cloud*, 265 U. S. 352 (1924).

<sup>11</sup> The due process clause of the 14th Amendment has been interpreted to prohibit the levying of taxes and the exercise of the right of eminent domain for other than public purposes. Under this rule of law the funds and property of municipal corporations, acquired through the exercise of these powers, may not be turned over to private persons to promote essentially private interests. See *Loan Association v. Topeka*, 20 Wall. 655, 22 L. Ed. 455 (1874).

as they wish because the latter, *as such*, possess no rights under the Constitution which the former need respect.

#### CITY-STATE GOVERNMENT RELATIONS AS AFFECTED BY STATE CONSTITUTIONS

The extent to which a *state government* may exercise control over cities depends on the provisions of the state constitution and on the manner in which these provisions are interpreted by the state judiciary. Every state constitution contains clauses or sections dealing specifically with cities and/or other units of local government. The character of these stipulations varies from state to state and from time to time within any given state.

**Effect of Guarantees of Private Rights in State Constitutions.** Before discussing constitutional provisions which clearly pertain to municipalities, consideration will be given to the general problem of the effect of constitutional guarantees of private rights on city-state governmental relations. As will be shown, the doctrines of state constitutional law on this subject are not necessarily the same as those which prevail in the case of the national constitution.

The controlling principle of one phase of this problem is clear enough, viz., under state constitutions, as under the Constitution of the United States, the state government in exercising control over cities is obliged to respect the constitutionally guaranteed rights of private persons and corporations. No attempt will be made to summarize the actual limiting effects of this obligation.

Final interpretation of a state constitution rests with the highest state court. Consequently, the limitations on state governmental control of cities arising from the necessity of respecting the constitutional rights of third persons require separate determination for each state. Suffice it to say that the results of the application of the general principle are similar to those already described in discussing city-state relations under the national constitution.

The other phase of the problem pertains to the question of whether or not guarantees of private rights in state constitutions have been so construed as to afford protection to municipal corporations, *in their own right*, against control by the state government. The answer to this question is affirmative in some states and negative in others. Unfortunately, it is impossible to indicate accurately to what extent cities benefit directly from such guarantees. Even a careful examination of the decisions rendered in each state fails to resolve doubts concerning the degree to which the regulative power of the state government actually is limited. In general, the restraining effects of guarantees of private rights are too slight to be of major significance.

Such direct protection as cities enjoy in some states is attributable to the distinction between the public and private capacities of municipal corporations. According to McQuillin,<sup>12</sup> the weight of judicial decision in the several

<sup>12</sup> *The Law of Municipal Corporations*, 2nd ed. (Chicago, Callaghan and Company, 1928), Vol. I, pp. 620, 630, and cases there cited.

states supports the view that the constitutional guarantees which are applicable to the property rights of private persons extend to property owned by municipal corporations in their private or proprietary capacity.

A leading case in point is *Proprietors of Mount Hope Cemetery v. Boston*.<sup>18</sup> The court held invalid an attempt on the part of the Massachusetts legislature to transfer a cemetery owned by Boston to a newly-formed private corporation. Its decision was based in part on the ground that property which the city owns in its private or proprietary character, as a private corporation might own it, is protected under the Constitution of Massachusetts. After observing that the legislature may exercise control over property owned by a city in its public capacity even to the extent of requiring its transfer, without compensation, to some other agency of government, the court asserted:

... this legislative power of control is not universal, and does not extend to property acquired by a city or town for special purposes not deemed strictly and exclusively public and political, but in respect to which a city or town is deemed rather to have a right of private ownership, of which it cannot be deprived against its will, save by the right of eminent domain with payment of compensation.

In all of the states, the legislature, in the absence of definite constitutional provisions to the contrary, may deprive municipal corporations of their public property, barring the transfer of such property to private interests for strictly private purposes. However, in many of them, as in Massachusetts, the authority of the legislatures in regard to property held by municipalities in their private character is limited by various constitutional provisions pertaining to the property rights of individuals and private corporations. This general doctrine does not prevent the legislature from abolishing a municipal corporation and transferring its property, private as well as public, to other public corporations regarded as its successors. Nor does it prohibit the regulation, in a variety of ways, of property owned by a municipal corporation in its proprietary capacity.

In some states, too, municipal corporations in their private or proprietary capacity receive protection against state governmental control in connection with other guarantees of individual rights, e.g., state constitutional guarantees against impairment of the obligation of contracts. The vagueness and uncertainty of judicial opinions on this entire subject, together with conflicting court decisions, complicate the problem of determining to what extent state governmental control of cities is restricted by guarantees of private rights in general. There is widespread disagreement, for example, as to when municipal corporations are acting in a private, as distinguished from a public or governmental, capacity. It is nevertheless clear that in many states municipal corporations, as such, in their proprietary capacity, benefit to some extent from guarantees of rights to private persons. Constitutional law in these states differs in this respect from national constitutional law as pronounced by the United States Supreme Court in *Trenton v. New Jersey* and *Williams v. Baltimore*.

<sup>18</sup> 158 Mass. 509 (1893).

**Constitutional Provisions Designed to Protect Municipalities.** Except for provisions pertaining to municipalities which have been inserted in the state constitution, the policy of a state in the field of local government is determined by its legislature and administered by its executive, administrative, and judicial organs. Generally speaking, the controlling principles of law concerning the scope of authority of the legislative, executive, and judicial branches of government are the same in all of the states.

The governor, administrative agencies, and the courts possess only such power as has been granted to them, either expressly or by implication, in the constitution and laws of the state. As a general rule, however, the legislature is held to be vested with all powers which are not denied to it, directly or indirectly, in the state constitution.

Under the first state constitutions, the power of the legislature to control municipalities was practically unlimited, and until the last quarter of the nineteenth century there were comparatively few attempts to restrict this power in behalf of cities. Thereafter, restrictions multiplied rather rapidly in most of the states, but even today the policy of the state with respect to cities is formulated for the most part by the legislature, with reliance on court action as the chief means of enforcing compliance with the laws which have been enacted.

In recent years there has been a growing tendency to resort to various forms of supervision by state administrative agencies, in addition to the traditional judicial controls, in order to secure conformity to standards established by the legislature.

(1) **Doctrine of an Inherent Right of Local Self-Government.** The city is unquestionably a creature of the state. Except for protective constitutional provisions, it also is a creature of the state legislature. One need only examine the statutes and judicial decisions of the states to obtain impressive evidence in support of this statement. However, in a few states, viz., California, Indiana, Iowa, Kentucky, Michigan, Nebraska, and Texas, the doctrine of an inherent right of local self-government was recognized for a brief period by the courts as a means of checking a much-abused legislative interference in local affairs.<sup>14</sup>

The term "inherent," as descriptive of the right claimed, was not intended to signify a right as against the state acting through its constituent authorities. In all of the states, the supremacy of the state as a body politic never was questioned. The acceptance or rejection of an "inherent" right against legislative intervention in local matters depended on judicial interpretation of the state constitution as to the scope of power of the legislature. It was argued that local self-government had become established as a traditional

<sup>14</sup> For an account of the adoption of the theory of an inherent right of local self-government in California, see J. C. Peppin, "Municipal Home Rule in California. I", *California Law Review*, Vol. 30, November, 1941, pp. 1-45; the history of the doctrine in the other states mentioned above is presented in H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, Columbia University Press, 1916), pp. 12-15, and in H. L. McBain, "The Doctrine of an Inherent Right of Local Self-Government", *Columbia Law Review*, Vol. 16, March 1916, p. 190 ff.; April, 1916, p. 299 ff.

right before the formulation of the state constitution and that the framers of the constitution intended to preserve this right unless otherwise stated. Obviously, the validity of the argument hinged upon the controlling rule to be followed in settling controversies concerning the scope of legislative authority and on the evidence pertaining to the existence of a right of local self-government as a matter of tradition. The argument never was accepted by the courts of any states other than those mentioned. Even in the latter, the courts appear to have abandoned it in favor of the doctrine of legislative supremacy over cities except as curtailed by express or clearly implied constitutional restrictions.

(2) **History of Legislative Control of Cities.** The history of legislative control of cities in the several states is marked by transition from a policy of few, if any, restraints on the ordinary law-making authorities to one under which legislative discretion is circumscribed by constitutional restrictions designed to prevent the more objectionable types of interference in local affairs. At first, the practically unlimited power of legislatures over cities seldom was exercised in disregard of local opinion in matters of local concern. Gradually, however, unwelcome intervention in the affairs of municipalities increased, and eventually it became extreme and injurious, especially during the last half of the nineteenth century. The consequence was the curtailment of legislative power through constitutional limitations of one description or another.

These restrictions, including the guarantee of municipal home rule in a number of states, alleviated some of the worst evils of legislative control. Although abuses and misuses of legislative discretion still occur, they are not as widespread, as frequent, nor as flagrant as formerly.

A brief summary will serve to indicate the character of the objectionable acts which evoked protests against legislative meddling and led to the erection of constitutional barriers as a remedial measure. Possessing the power to pass special legislation, legislatures found it easy to deal with particular cities at their pleasure. The special act eventually became the instrumentality through which seekers of special privileges and spoils politicians gained their ends at the expense of local communities.

Cities were compelled to pay claims of doubtful merit, to purchase lands for parks, playgrounds, and other purposes so as to provide a lucrative market for influential owners, and to grade, pave, and sewer streets in advance of actual need in order to increase the opportunities for awarding fat contracts. Streets were vacated by statute and the construction of new ones required in the interest of land speculators and property owners. The salaries of local officials were raised by statute and numerous other unwise and extravagant expenditures not only were authorized but often made mandatory. Cities were permitted and sometimes compelled to give financial aid to railroad, canal, and turnpike companies.

A favorite and highly profitable field of legislative activity was the granting of franchises to water, street transportation, and gas companies. Public

utilities of this type needed to use the streets of cities for laying pipes or tracks. This privilege, as well as others equally necessary, often was conferred on them by special act under terms far more favorable to promoters and politicians than to the communities which were to be served. Large-scale bribery and graft in various forms eventually developed in connection with this type of exploitation of urban populations.

In many instances, offices were abolished, new ones created, and functions transferred from one agency to another, not in the interest of better city government, but to increase the patronage at the disposal of favored parties, factions, or persons. An excellent illustration is afforded by the action of the Pennsylvania legislature in abolishing the elective office of mayor in second class cities, at that time, 1901, Allegheny, Pittsburgh and Scranton, and substituting a recorder, with substantially the same powers, to be appointed by the governor of the state.<sup>15</sup> Sometimes, too, the term of an office was lengthened to insure the continued service of an incumbent who might otherwise have failed of re-election or re-appointment.

A fairly common practice was to deprive the larger cities of control over certain important functions by vesting full power in regard to them in state-appointed officers and commissions, without, however, relieving the cities of the burden of bearing the expenses incurred. An Act of 1861, for example, which established a board of police for the city of St. Louis, designated the officers of the permanent force, fixed the compensation of both officers and ordinary policemen, increased the size of the force, and authorized the commissioners to make binding requisitions on the city for such sums of money as might be deemed necessary. Another case in point is the well-known action of the Pennsylvania legislature in connection with the construction of the Philadelphia City Hall. In 1870 an Act was passed in which certain persons were appointed to a commission empowered to erect new municipal buildings in Philadelphia, to create debts, and to enforce the payment thereof by taxes levied under compulsion by the local authorities. Millions of dollars were spent without the necessity of obtaining the approval of the city authorities or the tax-paying population. An interesting feature of the Act was the arrangement whereby vacancies on the commission were filled by the commission itself, which was thus constituted a close and perpetual corporation.<sup>16</sup>

Another cause for complaint was the frequency with which charters and laws pertaining to cities were altered. Each session of a legislature brought forth numerous special acts pertaining to the organization, powers, and duties of particular cities, with the consequence that instability and uncertainty characterized the legal aspects of municipal government. For instance, the Jersey City charter underwent 91 revisions in the 40 years from 1835 to 1875, and 39 special acts were enacted for Brooklyn in 1870.<sup>17</sup> Moreover, the situation was aggravated because of the failure to adhere consistently to

<sup>15</sup> *Commonwealth v. Moir*, 199 Pa. 534, 49 Atl. 351. (1901).

<sup>16</sup> *Perkins v. Slack*, 86 Pa. 270 (1878).

<sup>17</sup> C. W. Patton, *The Battle for Municipal Reform* (Washington, American Council on Public Affairs, 1940), pp. 15, 17.

any definite scheme of organization. Piecemeal adjustments appear to have been the rule. This technique was partly due to the traditional policy of detailed enumeration of the powers and duties of municipalities.

Blanket grants of authority to deal with municipal affairs were disliked by state legislatures. As a result it was necessary to procure legislative action whenever new situations and necessities developed and previously conferred powers proved inadequate. Both those who pursued purely selfish interests and those who were motivated by concern for the best interests of the local community found it essential to visit the state capitol and curry the favor of the individuals and groups who controlled the legislature. Absentee government of this type not only resulted in hasty and ill-advised legislation by legislators who lacked information regarding local problems and conditions, but had the general effect of discouraging the development of a vigorous local interest in, and sense of responsibility for, the solution of local problems.

**(3) Causes of Excessive Legislative Intervention.** The foregoing account of legislative assaults on cities may have created the impression that the forces responsible for misgovernment were concentrated in the state capitals. There is ample evidence that such was by no means the case.

The state legislature often was first appealed to by local friends of good government who despaired of obtaining reforms through local agencies and turned to the state authorities for assistance. Municipal councils and other local officials were viewed with distrust as a consequence of many unfortunate experiences, and this loss of faith in boss-ridden or incompetent city authorities started the avalanche of special legislation which subsequently was responsible for the more serious inroads on local autonomy.

A combination of causes accounted for the extremely poor quality of city government during the period following the Civil War. Transition from an agricultural to an industrial economy resulted in a rapid growth in the number and population of cities. More services, particularly public improvements, were demanded from city governments which were too poorly organized to function efficiently and effectively. The dominant features of organization were separation of powers, innumerable checks and balances, extremely weak mayors, a great variety of independent boards and commissions, and administration through council committees. Lack of citizen interest in city affairs, a lowering of ethical standards as an aftermath of the Civil War, and the wild scramble for special privileges on the part of private interests, along with poor organization and phenomenal city growth, combined to produce political bosses and machines who specialized in extravagance, the piling up of debts, and exploitation of urban populations in various and ingenious ways.

The state politicians, who were quick to see and grasp the many opportunities for taking advantage of local communities, found a ready demand for their services on the part of both local and outside interests willing and eager to reap the profits to be derived from the possession of special privi-



leges. If the local reformer could run to the state capitol for assistance, so could big business and numerous petty grafters who never hesitated to sacrifice the interests of the community for the sake of their own. In practice, too, special acts were passed by a log-rolling process which had the effect of enabling the city's representatives in the legislature to dictate the passage or defeat of many proposed bills, good or bad, without examination by other members who had their own logs to roll. The record shows clearly enough that local as well as state forces were responsible for the predicament in which cities found themselves.

Cooperation between local and state political rings frequently occurred. In some instances, however, interference was attributable for the most part to the fact that the party in control of the state government differed from that which dominated the city. A Democratic city in a Republican state was likely to be the victim of policies designed to promote party advantage in contests for control of the national and state governments. Sometimes, too, factional fights within the same party were productive of the same results. Again, the real or imaginary conflicts of interest between urban and rural sections often led, and still lead, to attempts on the part of legislatures controlled by members from country districts to withhold discretionary powers and impose various disciplinary measures "for the good" of the cities.

**(4) Imposition of Constitutional Limitations.** The search for a remedy to prevent the most glaring evils associated with legislative regulation of municipalities resulted in the establishment of restrictive constitutional provisions which the courts were expected to enforce in cases brought before them. Some of these limitations were directed against specific abuses, while others of a more general character were designed to insure some measure of local autonomy or to check the discriminations and uncertainties which resulted from special legislation. Constitutional restraints of the type about to be described remain in effect at the present time. Their deletion in the future is unlikely.

Among the restrictions of a specific type were those which guaranteed the right of local selection of city officials, prohibited the creation and appointment of special commissions to take charge of municipal affairs, and deprived the legislature of power to open, close, and order the improvement of streets, to grant franchises in regard thereto, and to compel cities to levy taxes for corporate purposes. Tax and debt limitations were inserted in many constitutions, and quite often cities were prohibited from giving financial aid to public improvement corporations. Obviously, some of these restraining provisions were designed to check misuses of power by city as well as by state authorities.

A more general type of restriction was one which either prohibited all special legislation or prescribed the conditions under which it was permissible. In the states which did not interdict all special acts, various steps were taken to safeguard cities against the worst evils of special legislation.

A fairly general practice was to prohibit the enactment of special laws

with respect to certain enumerated subjects, e.g., the incorporation of cities. In some states, an extraordinary majority of the legislature was required for the passage of special legislation, and in a few, special acts became effective only with the assent of local officials or with the approval of a majority of the voters in the city to which they were intended to apply.<sup>18</sup> A number of states sought to prevent abuses through constitutional provisions designed to insure adequate publicity in connection with the adoption of special acts.

In many states, thirty-one eventually, special laws could be passed only if general laws were inapplicable. Under this restraint, final decision as to the applicability of general laws to particular situations rested with the legislature in some states and with the courts in others. Obviously, the latter arrangement was more likely to prove effective as a limitation on legislative power than the former.

The most formidable barrier to legislative interference in municipal affairs was the guarantee of home rule to cities. Beginning with Missouri in 1875, 17 states have attempted to solve the problem of city-state relations in this way. By "home rule" is meant the right of cities to prepare and adopt their own charters and to solve their local problems without interference on the part of state authorities, particularly the legislature. The degree of autonomy gained by cities depends on the terms of the constitutional grant as interpreted by the courts. This problem will be discussed in the following chapter.

Some of the earliest limitations on legislative control of municipal corporations were not the result of abuses of power. Instead, they were inserted in state constitutions either as declarations of reasonably well-established practices which it was deemed desirable to continue, or as pronouncements of changes in existing policy in conformity to asserted or presumptive popular demand. The latter probably was the motive which accounted for the clause in the New York Constitution of 1821 providing for selection of the mayors of cities by the local councils.

In 1851 Ohio and Indiana adopted constitutional provisions which apparently were intended to prevent special legislation pertaining to both municipal and private corporations. Available evidence indicates that the prohibition was primarily the consequence of abuses which had developed in the granting of charters to private corporations.<sup>19</sup>

Illinois, in 1870, was the first state to abolish special legislation with the definite purpose of protecting cities against legislative meddling. Thereafter, many other states deliberately required their legislatures to deal with cities by general rather than by special laws, sometimes to correct a local situation and sometimes because of borrowing from other constitutions.

<sup>18</sup> The Constitution of New Jersey (1947) permits special legislation upon petition by the governing body of any municipal corporation and by vote of two-thirds of all the members of each house of the legislature. A special law becomes operative only if it is adopted by ordinance of the governing body of the municipality or by vote of the legally qualified voters thereof. Art. IV, Section VII, par. 10.

<sup>19</sup> Although Iowa (1857), Kansas (1859), Nevada (1864), Nebraska (1867), Arkansas (1868), Tennessee (1870), and Virginia (1870) incorporated similar restrictions in their constitutions, the action appears to have been taken without past experience demonstrating a need for protection of this type for cities.

Before 1870, the year in which Illinois acted, constitutional provisions were adopted in a number of states to end certain specific abuses of power by legislatures in regulating city affairs. It is substantially correct, therefore, to name the middle of the nineteenth century as marking the commencement of the effort to protect cities against the more serious sins of legislatures by resorting to the device of constitutional restrictions under the guardianship of the courts.<sup>20</sup> However, the movement gained its greatest strength after 1870.

(5) **Effectiveness of Constitutional Limitations.** The resort to constitutional limitations as a means of ending objectionable legislative intervention in the affairs of cities raises the question of the effectiveness of this type of remedy. Nearly a century of experience with this "cure" has furnished enough evidence to enable observers to give a reasonably dependable answer.

The general conclusion seems to be that on the whole the effort has proved fruitless because ingenious legislatures, aided by favorable court decisions, have encountered little difficulty in partly evading imposed restrictions. For reasons which will be presented below, the judicial inclination toward a narrow interpretation of limitations is not without justification.

The best example of what can happen to constitutional limitations is afforded by the experiences of states which placed a general ban on special legislation for cities. A favorite and most successful mode of evasion was through the device of classification. Cities were divided into classes, usually on the basis of population, and by multiplying the number of classes the legislature succeeded in isolating many cities, particularly the largest ones which offered the greatest opportunities for exploitation, in classes by themselves. A law applicable to a class containing but a single city, although general in form, is clearly special in fact.

The constitutionality of this type of legislation depends on the distinction which the courts of a particular state draw between general and special laws and also on the conformity of a given scheme of classification to this distinction. A law is considered general in character if it is binding *in all parts* of a state *on all persons* or *on all of a distinct class* who fall within the scope and purpose of its provisions. An act is special if it merely applies to a specified locality or to a particular person or only binds some but not all persons in like circumstances. The distinction between general and special laws was nicely stated by the Pennsylvania Supreme Court as follows: "A statute which relates to persons or things *as a class* is a general law, while a statute which relates to particular persons or things *of a class* is special."<sup>21</sup>

Although laws retain their *general* character even if limited in application to a class of persons or things, the courts usually insist, as a matter of prin-

<sup>20</sup> See H. L. McBain, *The Law and Practice of Municipal Home Rule* (New York, Columbia University Press, 1916), Chapters II and III. In discussing the imposition and effectiveness of constitutional restraints and the events leading thereto, the author of this text has made liberal use of McBain's study.

<sup>21</sup> *Wheeler v. Philadelphia*, 77 Pa. 338, 348 (1875).

ciple, that the classification must be reasonable and that there must be a reasonably direct relation between the basis of classification and the objectives which the law seeks to attain. If a law operates uniformly on all the cities of a class, if that class differs substantially from other cities or classes of cities, and if the purpose of the law justifies the criterion of classification selected, the law almost always will be upheld as general and not in conflict with a constitutional provision prohibiting special legislation. The number of cities in the class is considered to be immaterial.

If a classification is intended to operate only in the present with reference to existing circumstances, thereby excluding all other cities in the future as well as at the time of enactment, the act probably will be condemned as special in character. An example is the establishment of a class containing all cities having a specified population on a certain date. Similarly, if an act contains time limits or sundry provisions having a like effect, or if it fails to meet the other requirements mentioned above, the courts ordinarily will declare it invalid as being in reality a special act.

As a rule, classifications based on differences in population have been sustained, whereas those founded on geographical distinctions have been set aside. The reasons for objection to geographical distinctions are two in number.

In the first place, the permanence of geographical conditions affords an easy means of applying a law to a certain city and perpetually excluding all others from its operation. Secondly, geographical features or locations as a basis of classification seldom are related directly to the subject matter of most legislation concerning cities. However, such is not always the case. Thus a New Jersey law which authorized cities on or near the ocean to lay out, open, and improve streets, drives, and public walks along the ocean front was upheld on the ground that its objectives warranted the placement of cities with an ocean location in a distinct class.<sup>22</sup>

On the other hand, a law of New Jersey which dealt with financial matters and applied only to seaside resort boroughs governed by commissioners was declared unconstitutional as being a special act. These boroughs were authorized to levy taxes by a different procedure and in excess of limits applicable to other boroughs. The court decided that contiguity to the sea was no ground for the existence of a different rule in respect to the general amount of taxes to be raised or the method of levy.<sup>23</sup> Similarly, in an Oregon case,<sup>24</sup> the act of 1921 creating the Multnomah County Tax Supervising and Conservation Commission was declared to be special as applied to the cities in the county. The court said: "The mere fact that any one of the above cities is located in Multnomah county certainly affords no reasonable basis for classification. Indeed, it is classification 'run wild'."

The constitutions of nearly one-third of the states expressly authorize the classification of cities for the purpose of enacting general laws. Several

<sup>22</sup> *The State, Sophia E. Bowker, Prosecutrix v. Elias E. Wright, George Hayday, and Levi C. Albertson, Commissioners, etc.*, 54 N. J. L. 130, 23 Atl. 116 (1891).

<sup>23</sup> *Alsbath v. Philbrick*, 50 N. J. L. 581, 15 Atl. 579, (1888).

<sup>24</sup> *City of Portland v. Welch*, 154 Or. 286, 59 P. 2d 228 (1936).

of them specify the number and kind of classes which may be created. Occasionally, a detailed plan of classification is incorporated in the constitution and thereby removed from the legislature's control. In the absence of such provisions, the extent to which the classification of cities may be carried with the intention of evading restrictions on special legislation depends upon the latitude permitted by the courts. The judges of some states have been surprisingly tolerant of legislative practices in this matter, e.g., California, Nebraska, Ohio (1870-1902),<sup>25</sup> and Wisconsin. Although the extremes of classification are preventable by judicial application of the principles reviewed in preceding paragraphs, the experiences of the past support the conclusion that classification usually ends in special legislation for the largest and most important cities.

The chief benefits accruing to cities from the prohibition of special legislation are: (1) a somewhat greater freedom from exploitation—a by-product of the requirement of equality of treatment for all communities or for all of a given class; (2) some degree of relief from the vexation of incessant legislative tampering. Attacks on particular cities at the behest of persons seeking special privileges and plunder are prevented, but legislative control of municipal affairs through the enactment of general laws remains unchecked. The degree of detail incorporated in such laws rests with the discretion of the legislature. Their quality may be bad or good. In so far, however, as a general law does not lend itself to the accomplishment of certain ends, e.g., the granting of a franchise to a particular concern, and inasmuch as general laws applicable to many municipalities are not so easily pushed through the legislature by the use of log-rolling tactics, a ban on special legislation provides cities, particularly the smaller ones, with some measure of protection against excessive legislative intervention in their affairs.

The state as well as the city is a beneficiary from limitations on special legislation. Members of the legislature are relieved of a great burden of work which interferes with proper consideration of basic problems of state-wide significance. They also are more likely to develop a broader outlook and rise above the spirit of narrow localism which is fostered by preoccupation with local or special acts. Finally, the log-rolling evil which makes for irresponsible law-making in general is curtailed to an appreciable extent.

Restrictions on the power to pass special laws may have objectionable consequences. The prohibition of special acts with respect to enumerated subjects may have the effect of placing local situations beyond effective control by any government unless authority to deal with them is conferred on municipalities by the constitution or by general law. Again, complete withdrawal of the power of special legislation compels the legislature to regulate municipal affairs by the enactment of general laws which apply to all cities, or to all of a class, regardless of their individual differences and needs.

Classification affords an avenue of escape from the excessive uniformity which results if all cities are obliged to operate under the same laws. Appre-

<sup>25</sup> By a decision rendered in 1902, the Ohio supreme court finally put an end to all classification in that state. *State ex rel. Kniskely v. Jones*, 66 Ohio St. 453, 64 N. E. 424 (1902).

ciation of the absurdities of carrying uniformity to such an extreme probably accounts for the leniency with which courts ordinarily have viewed the classification schemes devised by legislative bodies. Of course, uniform legislation for all cities might work satisfactorily enough if the legislatures were willing to combine a liberal grant of permissive powers with broad discretionary authority in matters of organization and procedure. But that is something which legislatures almost always are reluctant to do.

The effectiveness of a constitutional guarantee of home rule for cities as a means of insuring some degree of local autonomy varies with the character of the grant and depends in large measure on judicial interpretation of such phrases as "municipal affairs" and "general laws of the state" which commonly appear in the home rule clauses of constitutions. In part, at least, the discretion of the courts has been substituted for that of the legislature in determining the appropriate extent of municipal freedom. Legislative supremacy in matters of state concern is maintained in all of the home rule states. In more than half of them, the legislature remains supreme even with respect to local affairs, subject to the usual proviso that legislative regulation must be effected by general rather than by special laws.<sup>26</sup>

**An Implied Limitation on Legislative Control.** A firmly established rule of constitutional law in the states prevents the legislature from delegating its general law-making powers to other agencies, state or local. However, the creation of municipal corporations endowed with power to prescribe local regulations for purposes of local self-government never has been considered inconsistent with this implied limitation of the competence of the legislature.

The rule in question has restraining effects, but these are difficult to state with precision. In two states, Michigan and Wisconsin, statutes conferring on cities the right to draft their own charters were declared unconstitutional on the ground that the making of charters is a legislative power which may not be delegated. Contrary conclusions have been reached in a few jurisdictions, e.g., Florida, but in all probability the courts of most states, if their legislatures should exhibit such generosity to cities, would follow the Wisconsin and Michigan rulings.

In principle, the rule against delegation of general law-making authority prohibits the legislature from granting cities the power to legislate regarding matters which concern the people of the state at large and not merely the inhabitants of the local community. Examples of subjects of state-wide concern are the banking system, relations between employers and employees, the settlement of industrial disputes, marriage and divorce, and the definition of crimes and the prescription of punishment therefor. Specific duties relative to the enforcement of state laws dealing with such problems may be imposed on local officials, but the power to pass local laws or ordinances must be confined to matters of local concern, i.e., municipal affairs.

Although the controlling principle is clear enough, the manner of its appli-

<sup>26</sup> The home rule problem is discussed at length in Chapter VII.

cation to particular situations is marked by uncertainty. An illustration of the way in which the general doctrine is sometimes reconciled with considerations of expediency is afforded by the ruling in New York that a law is not invalid because it delegates powers which are not *strictly* municipal, but are in their essence state functions.<sup>27</sup> The powers in question related to assessments, public safety, health, charity, and plumbers' licenses.

Failure of the courts to distinguish clearly and consistently between matters of state concern and municipal affairs accounts for the prevailing uncertainty concerning the actual restrictive effects of the general doctrine. The field of municipal affairs varies from state to state and from one branch of law to another. With respect to the principle under consideration, the courts have been quite liberal in drawing the line of demarcation in such a manner as to permit the legislature to delegate power over many subjects to municipalities.

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<sup>27</sup> *Cleveland, Commissioner of Board of Waterworks, et al. v. City of Watertown et al.*, 222 N. Y. 159, 118 N. E. 500 (1917).

## CHAPTER VII

### CITY-STATE RELATIONS: MUNICIPAL HOME RULE

#### *Outline*

#### Methods of Providing Cities with Charters

##### Legislative Charters

##### Home Rule Charters

##### Preparation, Adoption, and Amendment of Home Rule Charters

#### Scope of Home Rule Powers and Extent of Freedom from Legislative Control

##### Distinction Between Municipal Affairs and Matters of State Concern

#### The Pro and Con of Municipal Home Rule

IN THE UNITED STATES the self-government of cities is founded on considerations of expediency and also on the conviction of its rightfulness in the ethical sense. Controversy prevails, however, concerning the degree of autonomy to be granted and the method whereby it shall be insured. One group insists on adherence to the traditional policy of determination of the extent of local self-government by the state legislature, whereas another favors a constitutionally guaranteed "home rule" system under which cities enjoy the right to frame and adopt their own charters and to govern themselves within limits defined by constitutional provision. The proponents of these two different methods of providing for local autonomy base their contentions almost entirely on considerations of expediency in the light of past, present, and probable future experiences.

#### METHODS OF PROVIDING CITIES WITH CHARTERS<sup>1</sup>

Before discussing the technical aspects of the home rule movement, it is desirable to consider the prevalent methods of providing cities with charters. During the colonial period, city and borough charters normally were granted by the colonial governors and proprietors. The assemblies granted, confirmed, or amended municipal charters in comparatively few instances. Their authority to do so was at best uncertain and precarious. After the Declaration of Independence, the provision of charters became a legislative monopoly until the Missouri constitution of 1875 established a system of home rule for St. Louis and for cities with a population of over 100,000.<sup>2</sup> Since that date,

<sup>1</sup>For brief summaries of the methods used in each state see N. N. Gill and M. S. Benson, "Classes and Forms of Municipal Government," *The Municipal Year Book*, 1945 (Chicago, The International City Managers' Association, 1945), pp. 90-123.

<sup>2</sup>The prohibition against special legislation for cities in the Iowa constitution of 1857 caused the Iowa legislators to grant the power of charter amendment to cities already incorporated under special charters antedating the constitution.



sixteen other states<sup>3</sup> have adopted constitutional provisions conferring on cities the right to frame and adopt their charters. At the present time, consequently, there are two kinds of charters from the standpoint of legal origin, viz., (1) legislative charters, and (2) local or home rule charters, i.e., those prepared and adopted by duly authorized agencies of the city.

**Legislative Charters.** Most cities operate under charters which the state legislature provides. A legislative charter may deal with the organization, powers, and duties of a city in broad and general terms or in varying degrees of detail. The policy which legislatures pursue in this matter determines the degree of local discretion in the solution of local problems. To the extent that a charter contains detailed provisions concerning organization, procedure, and policy, the legislature, rather than the city council, serves as the policy-determining agency in municipal affairs. Cities enjoy a large measure of autonomy only if their charters combine a generous grant of power with a minimum of detail in regard to organization and procedure.

Legislative charters are divisible into several classes on the basis of the conditions which determine their applicability to cities. The distinguishable types are special act charters, the general code applicable to all cities, the general law which applies to the cities of a designated class, and the optional charter.

In the absence of constitutional restrictions, the legislature may pass a *special act* which constitutes the charter of the city named therein. This method of providing charters prevailed until the middle of the nineteenth century. Thereafter it was prohibited by constitutional provision in one state after another, beginning with Ohio and Indiana in 1851, with the result that at present it may be utilized in only one-fourth of the states.<sup>4</sup> The chief merit of this method of furnishing a legislative charter is that each city, being dealt with separately, may be given a charter suited to its own peculiar conditions and needs.

A primary objection to the special act technique is that legislatures have abused the power of special legislation, usually at the behest of special interests, and used it as an instrument of discrimination and unwarranted interference in municipal affairs. The special act charter also is criticized on two other grounds, first, that it produces too much variety and too great a complexity in a state's system of city government; and second, that it often is the product of legislative log-rolling.

Instead of granting charters by special act, a legislature may enact a *general law* which serves as the charter of all cities<sup>5</sup> in the state, or of all in a specified class. If the law is applicable to *all* cities regardless of their population, area, and other individual characteristics, it may prove wholly satis-

<sup>3</sup>The seventeen states which have established municipal home rule by constitutional provision are Arizona (1912), California (1879), Colorado (1902), Maryland (1916), Michigan (1908), Minnesota (1896), Missouri (1875), Nebraska (1912), New York (1923), Ohio (1912), Oklahoma (1908), Oregon (1906), Texas (1912), Utah (1932), Washington (1889), West Virginia (1936), and Wisconsin (1924).

<sup>4</sup>Connecticut, Delaware, Florida, Maine, Maryland, New Hampshire, Rhode Island, Tennessee, and Vermont rely entirely, or nearly so, on special charters. Limited use of special charters is made in a few other states, including North Carolina and Virginia.

<sup>5</sup>No state now requires all cities to operate under a single general code.

factory to none, unless it combines a broad grant of powers with a minimum of detail regarding organization and procedure. This method insures uniformity, prevents discriminations, and results in less interference in municipal affairs, but it sacrifices experimentation and such variety as may be desirable because the needs of different cities are by no means exactly alike.

The disadvantages of a single general code for all cities, together with the desire of legislatures to circumvent constitutional limitations on special legislation, have led to the classification of cities, generally on the basis of population, with a *general law applicable to each class* constituting the charter of every city included therein. This method is a compromise which avoids some of the disadvantages of special legislation on the one hand and the general law applying to all cities on the other. It is criticized on the ground that uniform treatment of all the cities in a given class may fail to meet the needs of each and every one. Furthermore, classification eventually leads to disguised special legislation, especially for the large cities, each of which is easily placed in a class by itself. Thus Philadelphia, Pittsburgh, and Scranton are the only cities in their respective classes in Pennsylvania, and Indianapolis (Indiana), Louisville (Kentucky), St. Joseph, (Missouri), and Lincoln and Omaha (Nebraska) are other cities which enjoy the same dubious distinction. A majority of the states utilize the classification plan, but not always to the exclusion of other methods.

The three types of legislative charter so far discussed may be imposed on cities whether they like them or not. No opportunity need be given to accept or reject. Nor are cities in a legal position to compel legislative adoption of charters which they consider desirable.

Of course, the officials or residents of a city may attempt to influence legislation in one way or another, for example, by drafting a charter and securing its introduction by some member of the legislature,<sup>6</sup> or by appearing before legislative committees, or by engaging in lobbying activities. In fact, associations of cities or of city officials maintain powerful lobbies in many state capitals. However, persuasive methods may prove ineffective, and if the legislature chooses to disregard the representations of cities, no effective remedy is available.

The legislatures of many states, especially in recent years, have seen fit to grant cities the privilege of choosing one of two or more legislative charters incorporated in general laws applying to all cities or to all of a designated class.<sup>7</sup> This method of providing charters is known as the optional charter

<sup>6</sup> In 1945, the mayor of Hartford, Connecticut, appointed a special commission which drafted a council-manager charter. This charter was approved by the voters by a greater than two to one majority. It was acted on favorably by the Connecticut legislature and signed by the governor in May, 1947. See "Hartford Votes Manager Plan 2 to 1," *National Municipal Review*, Vol. XXXVI, No. 1, January, 1947, p. 32. A council-manager charter for Richmond was prepared by a local charter commission, approved by the voters, and subsequently adopted by the Virginia legislature early in 1948. Other communities in various states without "home rule" are taking the initiative in charter revision in the hope of securing ultimate legislative approval of formal proposals.

<sup>7</sup> Approximately two-thirds of the states provide optional charters for at least some cities, but only about half of these states permit practically all cities to choose among the three major forms of city government. The latter group includes Georgia, Idaho, Iowa, Kansas, Massachusetts, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, South Dakota, Virginia, and West Virginia.

plan, but it does not necessarily mean that cities are allowed to select one of a number of complete charters. Frequently, many provisions of this type of general law are mandatory and only certain sections are made optional. These ordinarily pertain to the form of government, with the result that a city may decide, for instance, whether to operate under the mayor-council, commission, or council-manager plans. Sometimes, instead of including optional features in a single general law, each of the several legislative charters which cities are permitted to select is enacted in the form of a separate law. The distinction between these two plans is one of form rather than substance.

The optional plan just described differs from another type of option which some or all of the cities of many states may exercise, viz., the privilege of choosing one of several *methods* of obtaining charters. Thus, in Colorado, a city may prepare and adopt its own charter under a system of home rule, or decide to operate under general laws enacted by the legislature. Again, in Nebraska, cities may adopt a home rule charter, incorporate under the general code of that state, or select a charter under the Nebraska optional plan. In most of the home rule states, cities are not compelled to take advantage of the right conferred on them, and may, if they wish, operate under a legislative charter.

The point to be borne in mind is that the optional charter plan usually is said to exist only if cities are offered a choice among two or more charters or parts of charters of legislative origin. There is at least a technical difference between the privilege of selecting one of a number of *charters* which the legislature previously has drafted and the opportunity to resort to one of several available *methods* of obtaining a charter.

The optional plan is advocated on the ground that although the legislature provides the charters, cities are given a limited choice and may select the charter which is best suited to their needs and tastes. Greater variety of governmental forms, local option, and legislative determination of charter provisions are combined in a plan which, it is contended, affords adequate protection of both state and local interests.

**Home Rule Charters.** Legislative provision of charters, whether by special act, a general law applying to all cities, general laws for each of several classes of cities, or general laws of the optional type, still leaves municipalities at the mercy of the legislature, without guarantee that the latter will exercise its power wisely and without satisfying the demand for local autonomy in matters of local concern. Consequently, it is claimed that the most satisfactory settlement of city-state relations lies in the establishment of a system of municipal home rule under which cities may prepare and adopt their own charters and solve their local problems as they see fit, subject only to such state control as may be necessary to safeguard the interests of the state.

Generally speaking, the original motive behind the home rule movement was to free cities from unwarranted interference in their affairs on the part

of the state legislature, to provide them with adequate authority to solve their own problems, and to enable them to exercise their own judgment as to which forms of government are most desirable and which policies will best promote their welfare. Municipal home rule also is advocated on other grounds which will be reviewed and appraised after a detailed consideration of the home rule systems in operation in the several states.

Altogether, seventeen states have established home rule for cities by constitutional provision. In some states the privilege is extended to all cities and villages, whereas in others it is confined to urban communities with a population in excess of a stipulated minimum.<sup>8</sup> An eighteenth state, Pennsylvania, has authorized but not compelled its legislature to grant cities the right to draft their charters. So far, (1948) no action has been taken.<sup>9</sup>

The legislatures of a few states, including Nevada and New Mexico,<sup>10</sup> voluntarily have enacted laws establishing home rule for cities in spite of the lack of constitutional clauses compelling or permitting such action. Whether the legislature of a particular state possesses the necessary authority is a matter which rests with the courts and depends primarily upon judicial application of the general rule prohibiting the delegation of legislative power to other agencies.

In Michigan and Wisconsin, for example, the courts have held that the making and amending of city charters is a legislative power which the legislature cannot lawfully confer on cities unless authorized to do so by the constitution.<sup>11</sup> The doubtful validity of statutory home rule systems and the reluctance of legislatures to establish them account for the opinion that the more expedient plan is to grant home rule powers by constitutional provision.

The most important questions requiring solution in a scheme of constitutional home rule are: (1) the procedure for drafting, adopting, revising, and amending home rule charters; (2) the scope of power to be conferred on cities; (3) the extent to which home rule cities shall remain subject to control by the legislative and administrative organs of the state government. Of these three, the second and third have proved the most difficult to solve in a satisfactory manner and have given rise to extensive litigation in most of the states. They also account for the fact that home rule does not have the same meaning in every state.

**Preparation, Adoption, and Amendment of Home Rule Charters.** In spite of variations in detail there are few differences of a fundamental character in the methods of preparing, ratifying, revising, and amending home

<sup>8</sup> Michigan, Minnesota, Ohio, Oregon, Wisconsin, Utah—all cities and villages; New York—all cities, but, in the case of villages, only those with a population over 5,000; Colorado—cities with a population of 2,000 or more; Oklahoma, West Virginia—cities with a population exceeding 2,000; California, Arizona—cities with more than 3,500 inhabitants; Nebraska, Texas—cities having a population greater than 5,000; Missouri, since 1945—cities with 10,000 or more inhabitants; Washington—cities in the 20,000 or over category; Maryland—Baltimore only.

<sup>9</sup> Persistent efforts to secure the passage of a home rule bill in Pennsylvania have proved futile. In 1947, for example, such a bill was adopted by the lower house, but was killed in committee in the upper chamber. The League of Third Class Cities lobbied against it. A similar measure is now (1948) before the legislature.

<sup>10</sup> N. N. Gill and M. S. Benson, *op. cit.*, pp. 112, 114.

<sup>11</sup> *State of Wisconsin ex rel. Mueller v. Thompson*, 149 Wis. 488, 137 N. W. 20 (1912); *Elliott v. Detroit*, 121 Mich. 611, 84 N. W. 820 (1899).

rule charters in the several states. As a rule, the procedures to be followed are prescribed by constitutional provision, but in a few of the states (Michigan, New York, Texas, West Virginia, and Wisconsin) the mode of exercising the local right to adopt or alter charters is determined by the legislature. This dependence on legislative action exists in some degree in all of the states because none of the constitutional provisions prescribing the machinery for the exercise of home rule powers is wholly self-executing.

An alternative to legislative provision of supplementary regulations is the vesting of such power in the corporate authorities of cities, but cities possess the necessary authority in merely a few states, and then only to a limited extent, chiefly in connection with the subsequent revision or amendment of home rule charters. In no state is this power conferred on cities in clear and unmistakable terms.

The procedure to be followed in local charter-making depends on the character and extent of the changes to be made. Usually, the process for either the initial preparation and adoption or the subsequent general revision of home rule charters differs from that which is established for partial amendment. The customary arrangements involve two stages: (1) the proposal of changes, and (2) the ratification thereof.

For either the first home rule charter of a city or for its later general revision, nearly all of the states provide for a drafting body which is commonly referred to as a local charter commission or board of freeholders.<sup>12</sup> This commission, which is charged with the task of preparing a charter, is almost always chosen by popular vote, generally from the city at large but in some states by wards.<sup>13</sup> It is a comparatively small body, ordinarily being composed of fifteen or fewer members.

The selection of a charter commission occurs only after certain preliminary steps have been taken. These are important because the persons or agencies possessing the power to initiate new charter movements are in a position to prevent changes if they refuse to act. With few exceptions, the initial step is the passage of an ordinance by the city council or the circulation and filing of a petition signed by a certain percentage of the qualified voters, the number varying from 5% to 25%.<sup>14</sup> In about half of the states, either of these actions is sufficient in itself to bring about selection of the charter commission. Elsewhere, the passage of an ordinance or the filing of a petition is merely the means of submitting to the voters the question of whether or not a commission shall be created. At the same time that the voters decide

<sup>12</sup> Oregon is the only state which has failed to provide for a commission or board of freeholders. A charter for an Oregon city may be drafted either by the council or by the petitioners who initiate the movement for a new charter. In Wisconsin, so-called charter ordinances may be originated by the council (two-thirds vote), by petition, or by a charter convention.

<sup>13</sup> In Minnesota, the members are appointed by the judge of the court in the judicial district within which the city is located. In New York, the commission may be selected in such manner as may be provided: (1) by the city council or by initiative petition, subject in either case to popular approval, or (2) by the state legislature. The commission which drafted New York city's 1936 charter was appointed by the mayor in accordance with the provision of a state statute.

<sup>14</sup> Under the Minnesota plan of judicial appointment of the commission, selection is compulsory on petition of 10% of the voters. Otherwise it rests with the discretion of the judges.

this matter, members of the commission generally are elected in order to obviate the necessity of a second election in the event of a favorable popular vote.

The prevailing practice following preparation of a new or revised charter is submission to the voters. An ordinary majority of those voting on a proposed charter is sufficient for ratification in nearly all of the states. Minnesota requires the affirmative vote of *four-sevenths* of those voting *at the election*. An ordinary majority of those voting *at the election* is required by Missouri in the case of St. Louis.

In view of the fact that many electors who participate in a general election fail to vote on charter questions, the stipulation of either an ordinary or an extraordinary majority of the voters *taking part in an election* is a severe requirement. This handicap may be overcome by submitting charters to the voters at a special rather than a general election.

State authorities are permitted to participate in the preparation and adoption of home rule charters in only four states. In California, a charter approved by the voters of a city does not become effective until ratified by a concurrent resolution adopted by an absolute majority of both houses of the state legislature. The charter must be approved or disapproved without amendment. In practice, this requirement has become a mere formality. Arizona and Oklahoma provide for approval by the governor following popular ratification. Since the governor cannot pass on the merits of a charter and must give his approval if there be no conflict with the state constitution and laws, it is not surprising that approval is forthcoming as a matter of course. In Michigan, the governor is given a suspensive veto over the work of a city charter commission. The charter is submitted to him before being passed on by the voters, but, if he disapproves, his veto may be overridden by a two-thirds vote of the commission which prepared it.

Up to the present time, state participation in these states has proved to be so insignificant that it hardly deserves mention. Better results probably would be attained if arrangements were made whereby competent state administrative authorities could serve as expert advisers to charter commissions during the drafting stage. Most charter commissions need advice and information which the state with its greater financial resources easily could provide.

The methods for partial amendment of home rule charters are essentially the same in all of the states. Ordinarily, amendments may be proposed by either the legislative authority of a city, i.e., the council, or by a petition signed by a specified percentage of the qualified voters.<sup>15</sup> In a few states this percentage, which varies from 5% to 25%, is less than that required for the initial establishment or general revision of a charter. Amendments proposed in either way must be ratified in most jurisdictions by a simple majority of

<sup>15</sup> In Minnesota, besides proposal by petition, the board of freeholders, which is appointed by the court for a four-year term, is authorized to propose amendments. Similarly, in West Virginia, the first charter board is a continuing body. It "shall make a continuing study of the functioning of the city government and may propose revisions for not less than four years after such charter shall have taken effect." The councils of Class III cities in West Virginia may propose amendments by ordinance.

those voting *thereon* at a general or a special municipal election.<sup>16</sup> California, Arizona, Oklahoma, and Michigan require action on amendments by the same state authorities and in the same manner as is provided for new charters and general revisions, but the gubernatorial veto in Michigan may be overridden by a two-thirds vote of the city council.

#### SCOPE OF HOME RULE POWERS AND EXTENT OF FREEDOM FROM LEGISLATIVE CONTROL

Although home rule cities possess the procedural or adjective right to draft and amend their own charters, it is difficult to determine the scope of the substantive powers which they possess. Among the questions to be settled are the following: (1) What are the subjects to which the discretionary powers of cities extend in the preparation and amendment of their charters? (2) Are these powers derived directly from the constitution, or does the legislature possess the right to define them? (3) To what extent do home rule cities remain subject to legislative control?<sup>17</sup> Obviously, these questions, which are of utmost significance, should be answered separately for each state, but for the purposes of a general discussion of the home rule problem the states may be dealt with by groups.

In all of the home rule states, cities remain under the control of the state legislature in matters of state concern. The home rule movement never was intended to terminate legislative control in this field. Its basic purpose was to establish autonomy for cities merely with respect to distinctly urban problems. In some of the home rule states, however, cities remain subject to legislative control even in matters of local concern, with the result that the actual degree of local autonomy rests with the discretion of the State legislature. The explanation of this situation lies in the terms by which the grant of home rule powers has been made and in the manner in which pertinent constitutional clauses, practically all of them vague and ambiguous, have been interpreted by the courts.

The constitutions of many home rule states merely provide that cities shall have the right to draft, adopt, and amend their own charters, without otherwise defining the scope of the powers which may be exercised. This type of provision is illustrated by the following clause of the Oklahoma constitution: "Any city containing a population of more than two thousand inhabi-

<sup>16</sup> In Minnesota, *three-fifths* of those voting at the election is required. Missouri requires *three-fifths* of those voting thereon in the case of St. Louis. In New York, amendment by action of the council does not require a popular referendum in all cases, and amendments proposed by petition are first brought before the council and thereafter submitted to the voters only if the council fails to take favorable action within two months and if a second petition demanding a popular referendum is filed. Amendments proposed by the councils of Class III cities in West Virginia become effective without popular vote, provided no objections are filed at a required public hearing. In Oregon, amendments proposed by initiative petition and acted on favorably by the council need not be referred to the voters unless a referendum is demanded by petition. In Wisconsin, charter ordinances adopted by the council become effective without submission to the electorate unless a referendum is ordered by the council or demanded by a certain percentage of the voters.

<sup>17</sup> The most comprehensive and authoritative studies of home rule in the several states are those of H. L. McBain, *The Law and the Practice of Municipal Home Rule* (New York, Columbia University Press, 1916), and J. D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916-1930* (New York, Columbia University Press, 1933).

tants may frame a charter for its own government, consistent with and subject to the Constitution and laws of the State . . ."<sup>18</sup>

Other constitutions contain expressions to the effect that cities may govern themselves in matters of municipal or local concern. Examples are the statement in the Colorado constitution that a city or town shall have all powers "necessary, requisite, or proper for the government and administration of its local and municipal matters,"<sup>19</sup> and the Wisconsin provision that cities and villages "are hereby empowered to determine their local affairs and government."<sup>20</sup>

If considered apart from modifying clauses, either type of provision seems to confer substantially the same scope of home rule power. Probably as much power is derived by implication from the right to adopt and amend a charter as arises from the equally indefinite grant of authority to "exercise all powers of local self-government" or "to make and enforce all laws and regulations in respect to municipal affairs." Neither type of provision indicates clearly and definitely the specific matters which fall within the sphere of municipal competence. The courts of each state have been faced with the necessity of deciding this question in numerous cases which have been brought before them.

The constitutions of practically all of the home rule states contain a phrase which limits the grant of authority to frame and adopt charters or to exercise the powers of local self-government. This qualifying phrase often is worded as follows: "consistent with, and subject to, the constitution and laws of the state." Sometimes the words used are "the general laws of the state." Either terminology is open to various interpretations.

According to one point of view, the laws in question are only those which deal with *matters of state concern*. Unless special legislation is prohibited, such laws may be either special or general in application. Another interpretation of the phrase "laws of the state" is that it comprehends laws pertaining to *matters of local as well as state concern*. If the adjective "general" modifies the noun "laws," the meaning attributed to "general" under this second interpretation is "applicable to all cities or to all of a class." In other words, the term "general" is considered to have been used merely to distinguish between general and special acts without reference to subject matter.

If the first of these basic interpretations prevails, the provisions of home rule charters and ordinances supersede state laws regulating matters of local concern. In these matters, the home rule city may govern itself without interference on the part of the state legislature. Under the second interpretation, legislative regulations regarding municipal affairs supersede the provisions of charters and ordinances. Consequently, the scope of home rule power expands or contracts at the pleasure of the legislature. Since virtually all of the constitutions fail to indicate which of these meanings was intended, the responsibility of deciding the question has fallen to the courts.

<sup>18</sup> Art. XVIII, Sec. 3, a.

<sup>19</sup> Art. XX, Sec. 6.

<sup>20</sup> Art. XI, Sec. 3.



The scope of home rule powers and the extent to which cities remain subject to legislative control are questions which are marked by varying degrees of uncertainty in the several home rule states. This situation is attributable to the effect of changing conditions upon judicial attitudes, to inconsistent and confusing court decisions, and to the extreme difficulty of imparting precise meanings to the vague and indefinite phrases used in granting home rule privileges by constitutional provision. Nevertheless, it is possible to distinguish four general types of home rule system from the standpoint of the *source* from which home rule cities derive their substantive powers and the *degree of their subordination* to the legislature.

Type I is a system under which home rule cities possess *exclusive control* over matters of purely *local concern* by virtue of an express or implied *constitutional grant of authority*. The legislature may regulate these cities only in matters of state concern. It is excluded from the field of strictly municipal affairs. This type of system appears to have been established in Arizona, California, Colorado, Missouri,<sup>21</sup> Ohio, Oklahoma, Oregon, and Nebraska. In many of these states the field of municipal affairs gradually is being narrowed by the process of judicial decision, and in some of them the courts have asserted that statutes "affecting municipal affairs which are of state-wide concern" take precedence over any action of a municipality under its home rule charter.<sup>22</sup>

Under a second system, Type II, although power to regulate municipal affairs is likewise conferred *by constitutional provision*, the legislature possesses *concurrent power* to control such affairs by laws which apply uniformly to *all cities*.<sup>23</sup> Such general laws supersede conflicting provisions of charters and ordinances. To the extent that the legislature exercises its concurrent authority, municipal autonomy is correspondingly decreased. Wisconsin, New York, and probably Utah have this type of system. An interesting feature of the New York plan is the arrangement whereby the legislature may pass special laws relating to "the property, affairs, or government of cities" on request for a particular bill by a two-thirds majority of the council or by the mayor and a majority of the council.

Type III, found only in Maryland and applying to but one city, Baltimore, is a plan under which the city may exercise only such powers as the legislature sees fit to grant, but once granted and until withdrawn, such of these powers as relate to local matters may be exercised by the city free from legislative interference. Although the legislature may expand or contract the city's powers at pleasure, local regulations prevail over conflicting public local laws regarding matters of local concern which the legislature has placed under the city's control.

<sup>21</sup> The judicial view in Missouri is that the distinction is between governmental and corporate functions rather than between matters of general and local concern, *Coleman v. Kansas City*, 353 Mo. 150, 182 S. W. 2d 74 (1944).

<sup>22</sup> *Sullivan v. City of Omaha*, 146 Neb. 287, 19 N. W. 2d 510 (1945); *City of Tucson v. Walker*, 20 Ariz. 232, 135 P. 2d 223 (1943).

<sup>23</sup> In Wisconsin, if the legislature, in dealing with the local affairs of a city, classifies cities so that its act does not apply with uniformity to every city, the act is subordinate to a charter ordinance relative to the same subject matter. See *Van Gilder v. City of Madison*, 222 Wis. 58, 267 N. W. 25 (1936).

Under a fourth plan, Type IV, home rule cities are subjected to legislative control in two ways, first, because their powers, other than the simple right to adopt and amend charters, are subject to legislative definition, and second, because statutes enacted by the legislature supersede conflicting provisions of charters and ordinances in all matters, whether of state or local concern, if intended to do so. Although cities derive some measure of protection against legislative interference from the usual constitutional restraints on the power of special legislation, legislative supremacy is assured and municipal home rule is largely a matter of legislative policy. The states which have this type of home rule system are Michigan, Minnesota, Texas, Washington, and probably West Virginia.<sup>24</sup>

In some of the states of this fourth group, cities obtain a few specific powers by direct constitutional grant, but these grants are exceptional and too limited in scope to affect the essential nature of the system under consideration. An example is the Michigan provision that any city or village may acquire, own, and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power, and transportation to the municipality and the inhabitants thereof.

A common feature of the four types of home rules system is that the right to adopt and amend charters is conferred directly by constitutional provision. This right may not be withdrawn by the legislature even in those states in which the substance of the right is left for legislative determination. It is the absence of this feature which distinguishes the Pennsylvania type of constitutional provision for home rule. The constitution of Pennsylvania merely authorizes the legislature to grant the charter-making privilege to cities if it so desires and thereby removes the doubts concerning its competence which might arise under the rule that the delegation of legislative power is unconstitutional.

With so many varieties of home rule, it is impossible to formulate a formal definition which would indicate the precise meaning of home rule in all of the states. About all that can be stated in a general way is that a system of home rule exists when cities are permitted to draft, adopt, and amend their own charters under conditions established by constitutional or statutory provisions, usually both. Under most home rule systems, especially types II, III, and IV, the authority of the legislature to control cities remains very extensive in scope.

There has been a tendency in recent years to use the phrase "home rule" rather loosely. For example, states with an optional charter plan sometimes have been assigned to the home rule category. However, if the cities of a state are compelled to operate under legislative charters, with or without optional features, home rule in the technical sense is non-existent. A city

<sup>24</sup> The proper classification of some of the home rule states is extremely doubtful either because of inconsistent and confusing court decisions, e.g., Missouri, or because of a dearth of cases settling the issues under consideration, e.g., Utah and West Virginia. What the effect of the new Missouri constitution of 1945 will be remains to be seen. It prohibits the enactment of laws creating or fixing the powers, duties, or compensation of any municipal office or employment for any city framing and adopting its own charter.

might enjoy a larger measure of autonomy under a legislative charter than under a home rule system, but even so, local self-government without the privilege of drafting and adopting charters falls short of constituting "home rule" in the sense in which the phrase is used in this chapter.

### Distinction Between Municipal Affairs and Matters of State Concern.

Under most home rule systems, a vital question to be decided is the number and character of the activities which fall within the category of "municipal affairs." Final settlement of this issue rests with the courts. The decided cases reveal that the line of demarcation between matters of state as distinguished from local concern varies from state to state and from time to time in particular states. A given subject may be considered a municipal affair in one state and a matter of state concern in another, or an activity at one time held to be a local matter in a particular state later may be classified as a state affair.<sup>25</sup> Disagreement among the states is largely due to the difficulty of assigning particular subjects to a general category. Shifts in position by the courts of a particular state frequently are attributable to the changing conditions and needs of a dynamic society.

In all of the home rule states, the following subjects are invariably considered to be of state concern: banking, insurance, property, contracts, trusts, mortgages, wills, domestic relations, intrastate commerce, manufacturing, agriculture, mining, and the like. These are matters concerning which the claim of home rule for cities never has been advanced. Ordinarily, too, the list of state affairs includes education, taxation for municipal as well as for state purposes, the regulation of privately-owned and operated public utilities, the organization and jurisdiction of courts, the tort liability of cities, the annexation of territory, the suffrage, registration of voters, and the conduct of elections to other than city offices. All of these are matters in which cities have an undoubted interest. Consequently, the claim often has been made that the home rule privilege should extend to them.

The category of municipal affairs generally includes the following: the form of city government; the nomination, election, appointment, and control of city officers and employees; street improvements; street cleaning and lighting; regulation of the opening and closing of streets; waste collection and disposal; water supply; municipal light, gas, and other utilities; recreation; parks; city planning and zoning;<sup>26</sup> and the local police power. Although the state has an interest in these matters, the interest of the city usually is considered paramount.

Finally, there is a group of subjects marked by the absence of consensus

<sup>25</sup> In Colorado, the fixing of utility rates in cities is considered a matter of local concern, whereas in other states this function is classified as a matter of state concern. Most states regard taxation as a matter of state concern, but in some, e.g., California, it has been held to be a municipal affair. Disagreement among the states exists in regard to many other activities, including police and fire protection, zoning, and regulation of the bringing of claims against cities. The regulation of street traffic once was held to be a municipal affair in California and Oregon, but it now is regarded as a matter of state concern in both states. The automobile is largely responsible for this change in classification.

<sup>26</sup> In a number of states, e.g., Missouri (*Whippler v. Hohn*, 341 Mo. 780, 110 S. W. 2d 409, 1937), zoning is a matter of state concern.

concerning their classification as matters of state or of local concern. The attitude of the courts varies so much from state to state, and with regard to various aspects of these matters, that they cannot be assigned to either the state or the municipal affairs categories in a classification designed to cover the general situation in the entire group of home rule states. Nor is the appropriate classification indicated with certainty in particular states. Among the subjects which fall within this area of uncertainty are public health, police and fire protection,<sup>27</sup> the power of eminent domain, the presentation of claims against cities, traffic regulations, and such phases of municipal finance as budgeting, accounting, indebtedness, and special assessments.

The difficulty which is experienced in drawing a line of demarcation between state and local affairs is attributable to the fact that both the state and the city have a legitimate interest in practically all of the functions which cities perform. At first thought, for instance, fire prevention and protection seem to be matters of concern only to the inhabitants of a particular city, but it is easy to demonstrate that the state has an interest in the maintenance of minimum standards. Travelers and visitors are exposed to the local fire hazard, if only for a short time; loss by fire reduces the human and material resources of the state; fire insurance rates throughout a state are affected by local conditions; non-resident owners of property and business enterprises are directly concerned; and inhabitants of adjacent areas are exposed to the dangers of a widespread conflagration. Again, the park and recreational system of a given city apparently is essentially local in significance. Nevertheless, since health and crime are affected thereby, the state has a genuine interest in the conditions which prevail.

These illustrations disclose the reasons for controversy concerning the comparative importance of state and city interests in many fields of governmental action. In regard to some matters the interests of the city are paramount, but with respect to others the reverse is true. Frequently, state and local interests are about equal in weight.

A question which arises in determining the relative weight of the interests involved in a particular activity is whether uniformity or diversity of regulation is the more expedient under given circumstances. For example, should traffic regulations be the same in all parts of a state, or should each city be permitted to handle its traffic problems as it pleases? A categorical affirmative or negative response to these questions is unsatisfactory. Some phases of the traffic problem, such as the making of left-turns or the type and placement of traffic lights, call for uniformity of treatment, while others, such as the routing of local traffic and the permissible weight of vehicles on particular streets, depend so much on local conditions that there is much to be said for leaving these matters to the discretion of local authorities.

The foregoing illustration reveals another reason why the defining of jurisdictional lines is difficult, viz., the classification of a *general subject*

<sup>27</sup> Many states assign police and fire protection to the state affairs category. A case in point is Ohio, *Higin v. George*, 147 O. S. 165, 70 N. E. 2d 370 (1948), *State ex rel. Arey v. Sherrill*, 142 O. S. 574, 53 N. E. 2d 501 (1944).

as either a state or municipal affair may be impracticable with respect to every aspect thereof. Experience fails to warrant the assumption that every general function must fall within one or the other of these two major categories. Take the case of streets. The condition of most urban thoroughfares is essentially a matter of local concern, but the situation obviously differs in regard to city streets which constitute important links in a state highway system. Again, although the type of sewerage system which a municipality constructs is primarily a municipal affair, the policy pursued in disposing of sewage is clearly a matter of state concern. Many other situations<sup>28</sup> are of such a character that some combination of state and local control, rather than exclusive regulation of a general subject by either the state or a municipality, affords the most satisfactory solution of the jurisdictional problems which have proved so troublesome in the home rule states.

The need for a satisfactory demarcation of the respective spheres of state and municipal competence is particularly acute in those states which have freed municipalities from legislative control with respect to local matters. Once the courts of these states have classified a certain field of governmental activity as municipal in character, the restoration of legislative power to act, in the event of a demonstrable need therefor, requires either a constitutional amendment or a reversal or modification of the original judicial ruling. The situation differs, of course, in those home rule states in which statutes supersede charters and ordinances even in matters of local concern.

To dispel some of the legal uncertainties which inevitably arise when home rule powers are granted in general terms, the *Model State Constitution* of the National Municipal League supplements the general grant by an enumeration of those powers falling in the doubtful group which are to be considered municipal affairs. Some of the earlier home rule states, such as California and Colorado, have done the same thing by constitutional amendment, and two of the most recent states to provide for home rule, New York and Utah, taking advantage of the experiences of other states, have included similar enumerations in their original home rule provisions. Supplementary enumerations of this type remove some, but not all, of the most fruitful causes of litigation under home rule systems.

#### THE PRO AND CON OF MUNICIPAL HOME RULE

The case for municipal home rule is based in the main on the unfortunate experiences of American cities under the system of legislative control which has prevailed ever since the successful revolution against Great Britain. Unwarranted and damaging legislative interference in local affairs probably reached its height during the last half of the nineteenth and the first decade of the twentieth century, but even today the cities of many states have cause for protest against the restrictive effects of a control exercised by legislatures which often are dominated by rural interests. Cities are still

<sup>28</sup>In a recent California case, *Cunningham et al v. Hart et al*, 80 CA 2d 902, 183 P 2d 75 (1947), it was decided that although generally civil service is a municipal affair, the reinstatement in public employment of returning veterans is a matter of general public concern. Being such, a statutory provision would be construed as controlling the provisions of a home rule charter.

handicapped by inadequate grants of power, by the consequent inability to solve local problems with expedition, and by undue dependence on the vagaries of legislative policy.

Home rule is said to reduce the aforementioned evils to a minimum and at the same time to satisfy the demand for local autonomy in the solution of local problems. This primary argument for home rule is supplemented by others which stress the additional benefits to be derived from a constitutionally guaranteed sphere of local self-government. Advocates of home rule have not overlooked the fact that a cause sometimes is strengthened by the quantity of arguments which may be advanced in its behalf.

The claim is made that home rule develops a keener sense of local responsibility for local standards of government and encourages the inhabitants of a city to take a greater interest in governmental affairs. Interest grows as responsibility increases, so the argument runs, whereas an attitude of indifference or despair often is the result of absentee government which remains unresponsive to local sentiment. One need only consider the history of legislative control to find some evidence in support of this assertion.

Another argument stresses the point that cities are better informed than legislatures or other state agencies regarding local problems and conditions. Since knowledge usually is a prerequisite to sound policy, cities are more likely to attain higher standards of achievement if left to themselves instead of being subjected to the control of state governmental organs which sometimes are dominated by persons who have little interest in and limited information regarding the circumstances of urban life.

Supporters of home rule also contend that it leads to an experimentation in city government which is essential to rapid and continuous progress. The experiences of particular cities in trying out new plans and policies prove invaluable to others which may be more hesitant about pursuing programs involving departure from established practice. Under a restrictive legislative control in particular, progress is retarded because the more progressive and experimentally inclined urban communities are compelled to conform to the legislature's conclusions regarding the merits of proposed action. Legislatures have shown reluctance to depart from beaten paths.

Another contention in favor of home rule is that home rule charters may be devised in consideration of the peculiar needs of each city. Cities differ sufficiently from one another to justify the claim that charters are more likely to prove satisfactory if the conditions which prevail in particular communities are kept in mind. The home rule process undoubtedly permits the fashioning of charters on the basis of local circumstances. However, special act charters and, to a lesser extent, optional charter plans also may provide the variety which is needed, even though such charters are legislative rather than local creations.

In addition to presenting the foregoing arguments, proponents of home rule contend that it results in better charters, lessens the burden of legislative work, and promotes the separation of state and local politics. A few comments concerning these assertions are in order.

The superiority of home rule charters is difficult to prove. Some are excellent, some are poor, and some are as mediocre as the average legislative product. Home rule charters as a class apparently have proved just as satisfactory as those which legislatures have devised, and perhaps more so, if considerable weight be attached to local popularity in a scheme for rating charters. The good or poor quality of charters depends on so great a variety of factors that it is not easy to make fair and conclusive comparisons.

The probability that home rule will reduce the number of laws which legislatures enact for cities depends partly on the methods whereby charters were previously granted, partly on the amount of detail which was included in legislative charters, and partly on the type of home rule system established. If the volume of special legislation has been great, or if general or special laws have been so detailed and inflexible as to require frequent alteration to meet the changing needs of cities, the work of the legislature undoubtedly will be lightened materially. On the other hand, as has been shown, extensive legislative control still may be exercised under most home rule systems, with the result that the time a legislature devotes to city affairs depends upon the policy it chooses to pursue. Generally speaking, however, the legislative burden seems to have been reduced in some degree in all of the home rule states.

In so far as home rule prevents legislative interference in municipal affairs, one cause of a mixture of state and local politics is removed. At least, the opportunity for political maneuvers by state politicians, either with or without the connivance of local political organizations, is curtailed in some degree. But here again the positive gain to be expected cannot be stated precisely because so many variables are involved.

The opponents of home rule rest their case for the most part on the difficulty of drawing a satisfactory line of demarcation between problems of essentially local significance, the solution of which is of little concern to those living outside a city, and matters with respect to which state control may prove necessary in order to protect the interests of either the entire state population or the inhabitants of areas in the immediate vicinity of an urban community. As pointed out in preceding pages, both the state and the city have a substantial interest in virtually all of the functions which city governments usually perform. There is no way of determining precisely the relative importance of their respective interests in particular matters.

Science and technology are steadily overcoming barriers of time and space and developing more numerous and closer relations between the inhabitants of different sections of a state. The inevitable consequence of a growing solidarity is that the number of problems of essentially local concern is rapidly diminishing, the need for state action in many fields is becoming more urgent, and the importance of maintaining city-state relations on a flexible basis is becoming more apparent.

Opponents of home rule stress these points. They insist that the state legislature should be able to control municipalities whenever occasion demand and that it is unwise to erect legal barriers which can be abolished only

by the slow and cumbersome processes of constitutional amendment and judicial interpretation. They argue that in so far as the state has a legitimate interest in essentially local problems, however limited that interest may be, it should be free to act with expedition whenever the necessity for resorting to protective measures arises. Except for limitations designed to prevent the worst abuses of the past, the legislature should be in a position to grant as much or as little power of self-government to cities as seems expedient at any given time.

Other arguments against home rule are that it results in too much variety in city government, increases the chances that poor charters will be drafted, and removes an effective protection against local abuses. Each of these contentions merits brief consideration.

The complaint about excessive variety is based on the probability that the structure of government will differ considerably from city to city under a system which permits each community to draft and adopt its own charter. It is asserted that undue variety leads to complexity and confusion and increases the opportunities for misgovernment. The weight of this contention is difficult to appreciate because of the dearth of evidence showing that the standards of government in a particular city are raised by uniformity in the organization of city government throughout a state. However, comparisons between cities might be drawn more easily, and beneficial results might be expected if a single plan of government, unquestionably superior to other forms, were imposed on all cities of a state.

The claim that legislative charters are better than home rule charters is based on the opinion that legislatures are more experienced than local charter commissions, are less likely to be influenced by local prejudices, and have more resources at their disposal for obtaining the services of experts in charter drafting. Incompetence is said to be the distinguishing characteristic of many local charter commissions. Whether or not contentions such as these are well founded is a debatable question. It should be noted that conclusive evidence of the superior quality of legislative charters remains to be presented. However, home rule does enable politically backward communities to resist general tides of progress.

The local abuses against which a continuation of state control is claimed to afford protection are the maintenance of low standards detrimental to state interests and the exploitation of urban communities by local bosses and machines. If any significance is to be attached to past experiences, state control, particularly by the legislative branch, has proved an ineffective remedy for these abuses. The argument under consideration assumes that state governments are dominated by interests devoted to the cause of good government.

Both the proponents and opponents of municipal home rule often indulge in generalizations on the basis of limited supporting evidence and make numerous assertions of doubtful value from a scientific point of view. There are so many elusive factors in social and political relationships that it is difficult to determine the probable effects of a proposed course of action.



As far as home rule is concerned, much depends on past experiences, prevailing conditions, and reasonable expectations regarding future developments in particular states. Nevertheless, over seventy years of experience with various home rule systems casts some light on the validity of claimed advantages and disadvantages.

Some of the asserted merits and defects are unimpressive because they rest on certain assumptions which may or may not correspond to actual conditions. One such assumption is that local residence is a prerequisite to thorough understanding of the needs and problems of a particular city. Another is that cities, if freed from state control to any extent, will tend to adopt policies without considering or caring about the effect thereof on the population of the entire state or the inhabitants of adjacent areas. Although these assumptions are not without some foundation in fact, experience hardly warrants their acceptance as universal and immutable truths.

The usual arguments for and against home rule are general in character and fail to discriminate between the various types of home rule arrangement that may be and have been made. Some of them are based on the idea that home rule necessarily involves the erection of a barrier against legislative invasion of a field of action reserved to cities. It will be recalled that this is not the case in more than half of the home rule states. Under the systems established in states like Michigan, Minnesota, Texas, and Washington, statutes supersede the provisions of home rule charters and ordinances in matters of both state and local concern. The degree of local autonomy remains a matter for legislative determination. Consequently, the argument of opponents that home rule endangers the interests of the state and creates an inflexible division of powers between the state government and cities loses practically all, if not all, of its significance. Similarly, the claim of proponents that home rule puts an end to legislative interference in the affairs of cities and guarantees self-government must be qualified materially in respect to the home rule systems of these states. The prohibition of special legislation constitutes the chief legal preventive against undue legislative control.

In states like California, Colorado, and Oklahoma, the nature of the home rule system justifies the contention that cities gain freedom from legislative intervention. However, this freedom is confined to matters of local concern and the scope of these matters is ultimately established by the courts. Thus the degree of local autonomy remains a matter for determination by an organ of the state government. Under these circumstances, the fear of opponents that state interests are endangered by this type of home rule seems unwarranted. In fact, the evident judicial inclination to narrow the field of municipal affairs tends to undermine the argument of proponents that home rule is an effective guarantee of municipal freedom.

Judicial prescription of the scope of local autonomy is the price which the cities of many home rule states have paid for freedom from legislative control. This development raises the question of whether or not the ordinary courts are as well qualified as legislatures, or possibly an administrative

tribunal, for the task of deciding on the appropriate sphere of local self-government. The result of judicial control has been bothersome and costly litigation, not to mention uncertainty, from which one avenue of escape, if there be any, seems to be more explicit constitutional provisions regarding the dividing line between state and municipal affairs. Even then, many questions would arise for judicial decision. In time, of course, as the courts disposed of the most difficult issues, the volume of litigation would be reduced, but changing conditions inevitably would lead to the reconsideration of many matters. If too many jurisdictional problems were settled by express stipulations in constitutions, the result would be substitution of a constitutional enumeration of powers for the traditional and severely criticized legislative enumeration.

A possible solution of the problem is the creation of an administrative tribunal for continuous determination of the appropriate sphere of local autonomy. The cities of the state might be permitted to select a minority of the members of this tribunal. It could be granted exclusive jurisdiction over disputes concerning the extent to which home rule cities remain subject to state legislative control.

In behalf of the opponents of home rule it should be noted that few of them are opposed to *local self-government*. They merely insist that local autonomy should be a matter for legislative determination and believe that city charters should be provided by the state legislature. Advocates of home rule, on the other hand, point to past abuses of legislative control and maintain that the best means of insuring local self-government is by granting cities the right to draft their own charters and by curtailing the power of the legislature to regulate matters of local concern. In view of the lack of consensus regarding the matters with respect to which cities should be permitted to govern themselves, the basic difference of opinion between proponents and opponents of home rule concerns the proper method of providing for local self-government.

In spite of the numerous difficulties involved in the establishment of a satisfactory system, both experience and the weight of argument seem to indicate the desirability of some type of home rule for cities. Home rule has not proved disastrous in the states which have tried it. In fact, it may be credited with much of the recent progress which has been made in city government. Until state legislatures are reorganized and develop a more enlightened policy in exercising control over cities, this solution of the problem of city-state relations should continue to receive serious consideration. Of course, the need for home rule should be determined separately for each state.

All types of home rule are not equally satisfactory. Although it may prove difficult to secure agreement regarding the superiority of any one of the four types as compared to the others, there is much to be said in favor of the Wisconsin system. Since the power to regulate municipal affairs and to adopt and amend charters is conferred directly by constitutional provision, the cities of this state need not obtain legislative permission to deal

with matters of local concern. At the same time, if the need arises, the legislature may enact general laws (laws applying uniformly to all cities) which supersede local regulations in matters of either state or local concern.

Another means of safeguarding the interests of the state without making cities unduly subservient to the will of the legislature is a proper combination of home rule and state administrative control. If the exercise of home rule powers were subject to an appropriate form of supervision by state administrative authorities, local initiative in the formulation and execution of policy could be preserved without foregoing state protection against abuses of local discretion.

Administrative control, which may assume a variety of forms, is highly flexible. It is compatible with a generous grant of local discretionary power. However, unless administrative regulation is confined within carefully prescribed limits and surrounded by effective safeguards against abuses, it may prove as objectionable to cities as the statutory control exercised by state legislatures. Administrative controls of the coercive type, e.g., the issuance of binding rules and orders, easily may be carried to an extreme and result in an excess of red tape and interference. These dangers may be reduced to a minimum, if not eliminated entirely, by reliance on controls of a non-coercive character. The ultimate solution of city-state relations probably depends in large measure on an enlightened, voluntary cooperation between local authorities and state administrative agencies.

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CHAPTER VIII  
CITY-STATE RELATIONS: LEGISLATIVE, JUDICIAL, AND  
ADMINISTRATIVE CONTROL

*Outline*

The Need for State Control of Cities

Legislative Control

Deficiencies of Legislative Control

Proper Use of Legislative Control

Judicial Control of Cities

Administrative Supervision and Control of Cities

Nature and Extent of Administrative Control

Organization of Administrative Control

Forms of Administrative Control

Indiana, New Jersey, and North Carolina Plans

Claimed Advantages and Disadvantages of Administrative Control

Comment

DESPITE constitutional restraints, express and implied, the subserviency of cities to legislatures has been lessened to an appreciable extent only in some of the limited number of states which have established home rule systems. About one-fourth of the states retain the special act as an instrument of legislative control, subject to various restrictions which for the most part are of minor importance. In these states, chiefly in the South and in New England, the choice between general or special legislation rests with the legislature.<sup>1</sup> Elsewhere, general laws are either mandatory under any and all circumstances or are required in all situations to which they are applicable.<sup>2</sup>

THE NEED FOR STATE CONTROL OF CITIES

Although the regulation of cities by state governments, particularly by the legislature, has proved unsatisfactory in many respects, the need for a continuation of such control is unquestionable. In many states, more than half of the population is concentrated in cities, and in all of them urban areas are playing an increasingly important rôle in political, social and economic affairs.

<sup>1</sup>Recent studies indicate that special legislation in the twentieth century is about as objectionable as it was during the nineteenth. See V. O. Key, "The Problem of Local Legislation: Examples from Maryland", *State Government*, Vol. XIII, June, 1940, p. 1091; C. M. Johnson, *The Problem of Local Legislation and Home Rule in North Carolina*, Raleigh, North Carolina League of Municipalities, 1938 (mimeographed).

<sup>2</sup>A few of the states of this group permit special legislation subject to the approval of the city electorate, e.g., Michigan and Illinois (in the case of Chicago).

The entire population of a state is affected in one way or another by the conditions which exist in cities. Technological progress is steadily removing the barriers of distance and developing a more intense community life on a state-wide basis. Under these circumstances, the arguments formerly advanced in support of state governmental control over municipalities carry even greater weight today.

However, the conclusion that local autonomy has become undesirable and inexpedient is unwarranted. Urban self-government is as needful as it ever was, perhaps even more so. The trend of events merely places the state government under a greater responsibility than ever before to see to the maintenance of minimum standards of good government in cities and other local units. Experiences of the past indicate that the situation calls for new techniques and new policies rather than for the imposition of additional constitutional restraints on state governments. Fundamentally, of course, and in the long run, a satisfactory solution of the entire problem of city-state relations depends on the development of proper attitudes on the part of officials and citizens. A new code of political ethics will accomplish far more than a new code of law.

#### LEGISLATIVE CONTROL

The proper rôle of the state legislature is to establish *general policies* conducive to the attainment of high standards of city government. Legislative control of cities remains necessary, but other organs of state government are better qualified than the legislature for handling the detailed aspects of the city-state problem in such a way as to preserve a large measure of local autonomy without sacrificing state interests.

**Deficiencies of Legislative Control.** As now organized, legislatures are rather large and unwieldy bodies composed of members who devote comparatively little of their time to the task of legislation. In most of the states regular sessions are held once every other year for periods extending from two to four months on the average, and during this time the legislature is faced with the task of disposing of a two years' accumulation of a bewildering variety of state and local problems. Even a model legislature would be unable to do a good job under these circumstances.

The typical legislature exhibits too many shortcomings to function effectively under any conditions. Only limited progress has been made in overcoming defects in organization and procedure and in solving the problem of providing effective and responsible leadership, systematic programs of legislative action and dependable information.

Small wonder, then, that charters and laws pertaining to cities often are passed without careful scrutiny by the great majority of members and without adherence to a carefully formulated and essentially sound policy. The door remains open to irresponsible legislation dictated by influential representatives from both rural and urban sections, by politicians with an "in-

terest" in municipal affairs, and by lobbyists representing manufacturers, real estate operators, taxpayers' leagues, leagues of municipalities, associations of local officials, and other pressure groups.

Many of the associations which engage in pressure politics sponsor laws of a deserving character, but the "pressure" system of legislation is dangerous inasmuch as it permits the passage of bad as well as good laws through the activities of invisible forces. Failure to coordinate the efforts of those who push and pull for the enactment of laws pertaining to cities not only accounts for the absence of a carefully planned and consistent general policy, but constitutes one of the major causes of constant tampering with the laws under which cities are forced to carry on their operations. The resultant uncertainty and complexity of the law is an obstacle to better government.

Another cause of unsatisfactory legislation for cities is lack of adequate information concerning city problems and the failure to use much of that which is available. This failure is attributable to indifference, prejudice, questionable motives, and misunderstanding. Lack of information is largely due to the fact that the states in general (New Jersey and Pennsylvania are possible exceptions) have neglected the creation of permanent agencies *properly equipped and adequately financed* for the task of conducting a continuous and exhaustive study of *all* urban problems and needs.

The under-representation of urban areas in state legislatures affords a partial explanation of the prevailing situation. Members from rural sections dominate the legislative scene and usually show little appreciation of the problems which confront cities. Their inclination is to view cities with suspicion, to give unsympathetic consideration to their needs, and to wield legislative power for the political and economic advantage of the rural population.<sup>8</sup> Solution of the apportionment problem might result in better legislation for cities.

The reorganization of legislatures and the perfecting of legislative processes undoubtedly would bring about an improvement in the quality of laws pertaining to municipalities. Even so, there are limitations to the effectiveness of legislative control which cannot be overcome through reforms of any type. These limitations arise from the fact that laws are the instrumentalities through which legislative regulation necessarily is effected.

It is neither desirable nor possible to deal by law with all of the countless situations and contingencies which develop from day to day in the dynamic life of cities. No legislative body can anticipate all of them, and even if it were possible for legislators to develop the necessary foresight, no law adequate to every situation could be drafted. Moreover, whatever the provisions of a law, whether it delegates discretionary powers or merely imposes duties, the law itself is useless as a means of guaranteeing that power will be exercised wisely or that imperative duties will be discharged effectively.

<sup>8</sup>A comprehensive review of the problem of urban representation in state legislatures is presented in C. M. Kneier, *City Government in the United States*, rev. ed. (New York: Harper & Brothers, 1947), Chapter VI.

The objection to laws with very broad and general provisions is that state interests are endangered because of the great opportunities for abuse of discretionary power on the part of local officials. On the other hand, regulatory statutes which deal with matters in great detail are disadvantageous in several respects.

In the first place, the more detailed a law the less its flexibility and the greater the need for frequent revisions. Secondly, the loss of local discretion which results from specification in detail destroys interest, initiative and ingenuity in the solution of municipal problems and renders local self-government meaningless. Finally, a detailed law which applies to more than one city seldom fits the needs of each. This disadvantage, but not the others, may be avoided by resort to special legislation.

**Proper Use of Legislative Control.** Although most state legislatures have failed to profit thereby, experience indicates that better city government is more likely to be achieved if legislative control is confined to the establishment of general policies, if broad discretionary powers are conferred on cities with respect to their internal affairs and if greater use is made of controls exercisable by state administrative agencies in order to prevent abuses of local discretion detrimental to the interests of the people of the state in general.

Of course, the supply of "good government" depends for the most part on an effective and sustained popular demand therefor. It is not to be expected that sound laws will guarantee the supply, but it is equally true that poor laws and excessive legislative interference constitute obstacles in the path that leads to better city government.

To the present, legislative control has been carried too far in most of the states. Supplementary modes of administrative control have been relied on only to a limited extent, and then not in a systematic manner. However, the necessities of modern conditions of life have been instrumental in bringing about some significant changes in policy in recent years. Before discussing state administrative controls, consideration will be given to the character and manner of control which courts are constantly exercising over cities and their officers.

#### JUDICIAL CONTROL OF CITIES

A traditional type of state control of municipal corporations is that which the courts exert through the process of deciding cases falling within their jurisdiction. Judicial control still is the most commonly used method of compelling municipalities to conform to the laws of the state, including the numerous enactments of the state legislature. In the event that a municipal corporation strays beyond the boundaries of its delegated powers, or ignores procedures prescribed by law or neglects to discharge its legal obligations, remedial actions may be instituted in the proper courts. The decisions of the latter are binding on all parties concerned.



However, judicial control is merely a means of forcing cities to adhere to the laws which apply to them. Unwise and inexpedient legislative and administrative action falls beyond its reach. Municipal authorities often undertake extravagant and unneeded public improvement projects, maintain under-manned and poorly-equipped police and fire forces, purchase inferior supplies at unduly high prices, engage in unsound financial practices, or fill positions with poorly-qualified men and women.

The prevention of such practices lies beyond the competence of the courts. If, however, cities take action which is illegal, the judicial branch may intervene. A person who is proceeded against for violation of an ordinance cannot defend his action successfully on the ground that the council acted unwisely, but if he questions the legality of the ordinance, a court may uphold his contention and render judgment in his favor.

The general rule is that the courts lack authority to control the strictly discretionary powers of the legislative and administrative organs of municipal corporations, provided these are exercised in good faith, in conformity to law, and without fraud, corruption, gross abuse, or manifest oppression.

On the whole the rules pertaining to causes and forms of action and to court proceedings in general are the same for municipal corporations as for private persons. Such exceptions as have been established are designed to protect the interests of the public. An answer to the question of who are the proper or necessary parties to an action against a municipal corporation or its officers depends on the nature of the action, the character of the relief sought, and the policy of the given state as disclosed by pertinent statutory and charter provisions.

In spite of the fact that the appropriate forms of action and proceedings are fixed by the laws of each state, the remedies available against municipal corporations are everywhere essentially the same. Among them are the writs of *mandamus*, *injunction*, *quo warranto* and *certiorari*.

The writ of *mandamus* will issue to compel the performance of a duty which is made imperative by law, provided no other adequate legal remedy is available. It has been used to compel the levy of a tax as required by law, the payment of an official's salary, the recognition of one official by another, the holding of an election, and the issuance of bonds in payment of a public improvement. It is the usual, but not the only, means of enforcing judgments rendered in favor of the creditors of a municipal corporation. Issuance of the writ occurs only if the performance of an act is legally mandatory rather than discretionary.

A writ of *injunction* is used to restrain acts unauthorized by or in violation of law which would cause irreparable damage to private rights or to property. It will issue only if there be no adequate remedy at law. Examples of acts in excess or abuse of power which have been restrained by injunction are the illegal expenditure of funds, the execution of an *ultra vires* contract, the incurring of indebtedness in disregard of constitutional or statutory limitations, the collection of an illegal tax, and the creation of a nuisance on private property. The writ of *injunction* is unavailable against authorized

acts of municipal corporations which involve the exercise of legislative or administrative discretion, unless there be fraud and collusion or an abuse of discretion resulting in damage to, or oppression of, an individual or his property.

*Quo warranto* is the proper proceeding to test the legal existence of an office or to determine the right of a person to hold a particular office and to exercise the authority pertaining thereto. This writ also is utilized to question the legal existence of a municipal corporation, to prevent municipal corporations from usurping powers, and to settle disputes regarding the validity of annexation proceedings.

The writ of *certiorari* is issued for the purpose of reviewing the *judicial or quasi-judicial proceedings* of a municipal corporation or its officers in order to determine if action *outside or in excess of jurisdiction* has occurred. Unless otherwise stipulated by constitutional or statutory provision, only errors or defects of a jurisdictional nature or illegal proceedings appearing on the face of the record are subject to correction. No inquiry may be made into the merits of the action which is being reviewed. Nor are purely legislative and administrative acts subject to review on *certiorari* in the absence of statutory authorization.

This writ is grantable under the circumstances which have been indicated only if no other adequate remedy exists for the relief of an injured party. It constitutes a means of reviewing the proceedings of municipal authorities with respect to such matters as the dismissal of an officer, the grant or denial of licenses and permits, the opening, widening, or vacating of streets, the making of assessments for taxation, and the levying of special assessments for sewers or other public improvements.

The foregoing writs are by no means the only remedies available against illegal action on the part of city authorities. A municipal corporation may be sued without its consent in very much the same way as a private corporation or person. Its liabilities on contracts and in tort have been discussed at length in a preceding chapter. <sup>4</sup>

#### ADMINISTRATIVE SUPERVISION AND CONTROL OF CITIES

Lack of common sense, good judgment, skill, and honesty in the management of municipal affairs need not be tolerated by the inhabitants of a city as long as they possess the privilege of enforcing the responsibility of key officials through resort to the ballot box. In some cities, too, other instruments of popular control, such as the initiative, the referendum, and the recall, are available as political remedies. However, the interests of the state also may need protection against the unwise exercise of local discretion. Since judicial control is limited to the legality of action, the legislative and administrative agencies of the state government have to take such steps as may prove necessary.

The legislature may do one of three things. First, it may either withdraw

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<sup>4</sup> Chapter V,

the power which is being exercised unwisely or confer it on some other agency, state or local. Second, it may prescribe the policy to be pursued and impose the duty of enforcement on the local officials, thus depriving them of discretionary authority. Third, it may subject the exercise of local discretion to some form of supervision by state administrative officers in accordance with general standards established by law. Only the last of these courses of action provides state control without sacrificing local discretion either entirely or in large measure.

Compulsion is a function of law. Supervision requires the personal action of officials who are on the job continuously and in a position to investigate, to give advice, to approve or disapprove, or, if necessary, to issue specific orders. A legislature which meets intermittently and acts by passing laws and resolutions is unable to exercise control of this type. The task calls for administrative rather than legislative action.

**Nature and Extent of Administrative Control.** State administrative control may be defined as the direct or indirect control which administrative departments and officers of the state government are empowered to exercise over the day to day performance of functions by city officials. As used in this definition, the term "control" includes all of the ways and means by which state administrative agencies may influence the conduct of city authorities, whether by issuing binding rules and regulations or by giving advice, rendering services, or resorting to various techniques of persuasion. In short, administrative control may be either coercive or non-coercive in character.

The relationships between cities and state administrative agencies differ greatly from state to state with respect to their extent, their character, and the fields of municipal activity within which controls of one type or another have been established. Even within a particular state the form and extent of control vary as between different municipal functions.

The history of administrative control has been one of sporadic and haphazard development. It has increased fairly rapidly during the last two decades, but still remains relatively limited in scope. Generally speaking, little progress has been made toward its establishment on a systematic basis.

The fields within which the supervision of local units by state administrative authorities has become most pronounced are finance, education, highways, public health, and social welfare. Other local activities less commonly and less extensively subjected to this type of control include municipal utilities, personnel administration, fire prevention, police administration, library service, conservation, port and harbor development, housing, and city planning.

It is a comparatively simple task to list the fields of activity in which state administrative supervision over local units has been established. However, the scope and character of such control vary so much from state to state in regard to specific functions that a general discussion is necessarily lim-

ited to a description of the various forms of control supplemented by typical illustrations of each.

In general, cities are less frequently subjected to administrative control than certain other local units. Counties, townships, and school districts have been supervised to a greater extent than cities in such important fields as highways, social welfare, and education. The future may bring a change in this respect. Thus state administrative supervision is being extended gradually to such city streets as constitute important links in state and inter-city transportation routes. This trend probably will be accelerated as a result of the 1944 amendment to the Federal Highway Act which makes substantial federal sums available for streets of certain types within municipalities.

**Organization of Administrative Control.** The resort to administrative control of cities creates a problem of organization to which the states should pay more attention than they have in the past. A satisfactory solution is essential if the maximum benefits derivable from this type of control are to be realized. The states may select either of two basic patterns of organization or devise some type of compromise arrangement.

The plan which now prevails is characterized by the distribution of control among existing administrative agencies in accordance with the relations between the functions of each and the municipal activities which are to be supervised. Unfortunately, division of control has been carried so far in some states that two or more supervising authorities frequently are found even within a single functional field, such as finance. This practice certainly should be abandoned in favor of an arrangement under which supervision in a given field is the responsibility of but one agency.

The primary advantage of the prevailing plan lies in the superior knowledge and skill presumably available in departments which specialize in a particular public service. Officials of a state health department, for example, are better qualified than any other state officials to deal with the health problems of municipalities. Moreover, if each existing department be given control over such municipal activities as correspond in character or purpose to its own, the chances are good that proper attention will be paid to each of the municipal functions with respect to which state administrative control is established.

The chief disadvantages of this arrangement are two, viz., the inconvenience to cities resulting from the necessity of maintaining relations with a multiplicity of state agencies, and the possibility of conflicting rulings and lack of coordinated treatment of related municipal problems. Disintegrated control means divided responsibility. It hinders, if it does not prevent, an over-all consideration of the problems of cities.

The other basic type of organization involves concentration of all administrative control in a single state agency, possibly a department of local or city government. A few states have taken short steps in this direction. The merits of this scheme are undivided responsibility, the greater convenience to cities resulting from one center of contact, an over-all approach to the

city problem, and the opportunity for specialization in municipal affairs in general. Another advantage is that the head of such an agency might provide the unified and informed leadership which is so badly needed in the field of city-state relationships.

The objections to this plan are that a single agency will be unable to discharge effectively all of the tasks assigned to it and that the interests and skills of other state departments will be ignored. One way of meeting the latter of these objections is to make arrangements for placing the specialized services of the line departments at the disposal of the agency in question.

Perhaps some compromise between the two basic plans will prove desirable. No hard and fast rule can be laid down for the proper organization of administrative control because too much depends on its nature and scope and on conditions peculiar to each state. What is more, American experience with this type of control remains too limited to warrant the drawing of final conclusions.

The Committee on State-Local Relations of the Council of State Governments has suggested that unified supervision within particular fields be supplemented by the establishment of a single fact-finding and research agency which might be attached either to the legislative reference service or to the governor's staff. The functions of this professionally-manned agency would include: (a) the continuous study of state-local relations; (b) the publication of relevant facts; (c) the making of recommendations to appropriate state officers.

Continuous scrutiny of the entire field of state-local relations would provide needed information and lay the foundation for more integrated action in connection with legislative as well as administrative control of local units.<sup>5</sup>

**Forms of Administrative Control.** The forms of state administrative control may be divided into two major categories: (1) methods of influencing or supervising the conduct of city officials without reliance on coercive techniques; (2) controls which involve the making of binding decisions by state administrative agencies. The basis of this classification is the effect of control on the exercise of local discretion in the choice of objectives as well as ways and means.

Most techniques of control clearly fall in one category or the other. With respect to a few, the propriety of a given classification is perhaps debatable. For instance, the requirement of reports involves compulsion inasmuch as cities are legally obliged to prepare and transmit them to designated state agencies. However, the mere privilege of receiving reports in no way endows the latter with dictatorial powers. This type of control leaves cities legally free to follow their own judgment in the adoption and administration of policies. Consequently, it is essentially non-coercive in nature, even though

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<sup>5</sup> *State-Local Relations* (Chicago, The Council of State Governments, 1946), pp. 46-51.

the element of compulsion enters incidentally into the relationship between state and local authorities.

On the other hand, a form of control which becomes applicable only by reason of voluntary action on the part of a city nevertheless may give rise to predominantly coercive relationships. Such is the case with conditional grants-in-aid. State administrative agencies usually are empowered to see to it that attached conditions are observed in the event that cities accept such aid. For this reason it seems advisable to assign the conditional grant-in-aid to the category of compulsory controls.

The non-coercive class of controls includes the requirement of reports; the collection and dissemination of information; the giving of advice; the rendition of services, and the investigation and inspection of local conditions and services. To the essentially coercive category of controls belong conditional grants-in-aid; approval of contemplated municipal action; the review of action which has been taken; the issuance of ordinances and orders; the appointment and removal of local officers; and substitute administration, i.e., state performance of a given function normally discharged by local officials.

Cities frequently are required to *prepare and transmit reports* to specified state agencies in connection with a variety of activities, especially in the fields of finance, health, education, and crime control. Examples are reports of expenditures and revenues, indebtedness, school attendance, courses of study, vital statistics, statistics on crime and fingerprints, photographs, and other means of identifying criminals.

The value of these reports depends largely on their form and content which are prescribed either by law or by rules and regulations issued by the state department which is to receive them. Their purpose is to permit comparison of conditions in one city with those in another and to provide information which may serve as a basis for future legislative and administrative action. They may prove useful to local as well as state officials and to persons having an interest in the problems of particular cities.

For comparative purposes, uniform and complete reports are essential. Unfortunately, the efficacy of published reports as an incentive to better government often is rendered negligible because of careless preparation and the meager information which is provided.

The *collection and dissemination of information* is a means by which state administrative agencies may assist cities in achieving higher standards of performance. Some departments provide information on a limited scale with respect to particular activities, but up to the present time no states, except perhaps New Jersey and Pennsylvania, have created an agency properly equipped to carry on extensive research and to serve as a general clearing-house for information concerning cities and their problems. There are, of course, numerous public and private agencies in the United States which study municipal problems in general and publish their findings. Among them are Public Administration Service, the International City

Managers' Association, leagues of municipalities, certain agencies of the federal government, and various bureaus of municipal research.

An example of what a state might do along this line is afforded by the program now being sponsored by the Pennsylvania Bureau of Municipal Affairs. This plan involves cooperative effort on the part of the Bureau, a Committee on City Problems, universities, civic associations, cities, and other local units in fact-finding and the discussion of problems for the purpose of promoting the eventual adoption of appropriate local policies.<sup>6</sup>

The *giving of advice* is a type of control which probably will be developed on an increasingly larger scale in the future. State tax commissions advise and inform local assessors in regard to proper methods of assessing property; health departments hold conferences and issue bulletins concerning the control of contagious diseases and other local health problems; and various state authorities provide information and give technical advice with respect to such activities, among others, as city planning, zoning, housing, and traffic regulation.

The *rendition of services* is another technique for bringing about improvement in the functioning of local governments. In one or more states the services of state administrative agencies have been made available to cities for such purposes as the installation of accounts, the auditing of accounts, the preparation of plans for the refunding and readjustment of bonded indebtedness, the examination of specimens in state chemical, biological or hygiene laboratories, the investigation of crimes, and the training of policemen, firemen, assessors, personnel administrators, and sundry other local officials. Sometimes a fee is charged for the furnishing of services, e.g., the rendition of technical and administrative services in the personnel field in such states as California, Minnesota, New York, and Wisconsin. Types of service which deserve special mention are administrative surveys, demonstration projects, and the preparation of manuals of operation.

Neither the giving of advice nor the rendition of services enables state authorities to coerce city officials, but if adequately developed, these techniques of indirect control should prove effective means of improving the quality of municipal government. The resources of the state are extensive enough to provide a staff of experts to give needed advice and assistance to cities, especially the smaller ones, in various highly technical fields.

The *investigation and inspection* of local services, combined with publication of the findings, is relied on in a substantial number of states to discourage the worst abuses of local discretion. In more than half of the states, the accounts of city officials may be examined by state officers on their own initiative or at the request of the localities; and in many of them, the books, papers, and methods of local assessors of taxable property are subject to state inspection and investigation. Various states have made provision for the inspection of school systems, city hospitals, health and sanitary condi-

<sup>6</sup>The program is described in several articles published in *Commonwealth*, Vol. II, No. 1, November-December, 1947. Practically the entire issue is devoted to a discussion of local governmental problems.

tions, swimming pools, waterworks, sewage treatment plants, and other municipally-owned utilities.

Power to investigate or inspect frequently is associated with some of the compulsory forms of administrative control, but if not, as often is the case, the purpose thereof is to attain results through publicity, advice, and suggestion. The director of personnel in North Carolina is authorized to investigate the personnel needs of cities, to establish standards, and to make recommendations. Although he lacks power to compel the adoption of his suggestions, the personnel policies of cities may be influenced thereby.

Purely compulsory forms of administrative control, although more common today than a generation ago, have been resorted to infrequently in the United States. The *conditional grant-in-aid* is used rather extensively, but it is not compulsory in the strict sense of the term because municipalities are free, legally speaking, to reject the financial assistance which is offered. However, pressure to take advantage of such aid is always great, and upon acceptance state administrative agencies enforce compliance with the specifications, if any, which are attached to the grant. The conditions to be fulfilled are prescribed by law or by duly authorized administrative agencies. This practice affords an effective means of establishing minimum standards of achievement in the services with respect to which grants are made.

To the present, the grant-in-aid has been used for the most part in connection with the educational, public assistance, and highway construction activities of counties, townships, and school districts. Although less frequently applied to cities, grants have been extended to urban communities in one state or another for such various purposes as schools, libraries, social welfare, tuberculosis hospitals, venereal disease clinics, fire protection, and streets.

By granting financial assistance on the condition that certain standards be maintained, the state may do much to improve the quality of local government. Unless wisely used, however, grants-in-aid have the adverse effect of prolonging the survival of outmoded, inefficient, and ineffective governmental units. An extension of this method of controlling cities is anticipated.

The *advance approval* of municipal projects and the *review of work* which has been done are types of compulsory administrative control which have been provided for on a rather limited scale. They usually are coupled with authority to investigate and inspect. In some states, the approval of state health agencies is a prerequisite to the execution of city plans for waterworks and sewage treatment plants. The legality of proposed bond issues must be passed on by a state officer, often the attorney-general, in many states. In a few, contemplated issues may be disapproved if designated state authorities deem them unwise and inexpedient. Among other municipal activities occasionally subjected to state approval are tax levies, expenditure programs, contracts, quarantine and other local health regulations, the qualifications of health officers, the selection of voting machines, the rates charged by municipal utilities, and proposed extensions of utility services. The review of work which has been done, or is in the process of completion,



is provided for in one or more states with respect to such matters as the assessment of property for taxation, the execution of contracts, the rules of municipal civil service commissions, health regulations, and the accounting systems and quality of service of municipal utilities.

*Orders and ordinances* which are binding upon city officials may be issued by administrative authorities in a substantial number of states, but only in comparatively few fields of activity. An order differs from an ordinance in that it applies to a specific situation in a particular city whereas an ordinance establishes general rules to be observed by municipal officials in one or more cities.

The health authorities of many states may order discontinuation of the pollution of streams and other bodies of water, the construction and improvement of sewerage systems and waterworks, the enforcement of quarantine, and the taking of other measures in the interest of public health. Many state tax commissions may order the reassessment of property and some may require the adoption of specified methods of making assessments. Frequently, state public utilities commissions may issue orders for improvement of the services of municipal utilities and for the extension of service to particular individuals and corporations. New Jersey has empowered a state agency to examine local budgets and to order the levy of taxes to reduce deficits or to cover appropriations required by law.

The power of administrative bodies to issue ordinances establishing binding rules and regulations has been developed primarily in the fields of finance, health, and education. In one or more jurisdictions appropriate state agencies have been authorized to prescribe uniform budgeting forms and accounting systems, the principles and methods of assessing property, health rules and regulations, and regulations respecting the management of utilities, including water supply systems, light, and gas plants. Some state health authorities may issue regulations pertaining to water purification and sewage treatment. In Ohio, the state civil service commission is authorized to make rules regarding personnel policies in the event that local commissions fail to act.

The devices of approval, review, orders, and ordinances might well be used to a greater extent than in the past as a means of prescribing minimum standards and dealing with emergency situations which properly call for state intervention in local affairs. Much of the detailed legislation applying to cities then could be repealed. Measures necessary to safeguard the interests of the state could be taken by administrative agencies with due regard for the peculiar needs and conditions of particular communities.

The state *appointment* and/or *removal* of city officials are methods of control which have been provided for infrequently. In a few states police officials, assessors, health officers, and registrars of vital statistics may be appointed by the state. Again, the Ohio and New York civil service commissions are empowered to appoint city commissioners if local authorities fail to act. Local health officers, registrars of vital statistics, assessors, and tax officials may be removed by state agencies for incompetence or gross

neglect of duty in a fairly large number of jurisdictions. The governors of a few states may remove mayors and certain other officers, e.g., police chiefs, and in New York the state civil service commission may remove the members of local commissions for incompetence or neglect of duty.

Ordinarily, state administrative control is confined to the supervision and regulation of local officials in the performance of their work, but sometimes provision is made for assumption of the task of administering a given service by state departments or officers. This remedy, which is extraordinary, is resorted to only if other methods of control have proved futile and only when conditions have become so bad as to necessitate drastic action. City officials are temporarily supplanted by those of the state, but the city continues to bear the expense involved.

This type of control, which is referred to as *substitute administration*, has been established by a substantial majority of the states in the field of public health. If the health officials of a city disregard the regulations of the state department or fail to handle local health problems satisfactorily, the state authorities may take command of the situation. The tax commissions of some states are empowered to assess property if the action of local assessors proves unsatisfactory, and in a number of states, including Massachusetts, New Jersey, and North Carolina, the financial affairs of defaulting municipalities may be controlled by state administrative agencies. Although substitute administration is resorted to infrequently, the possibility of its use serves as an incentive to good government on the part of local officials who are desirous of avoiding state intervention.

In a few states, central administrative agencies are charged with the performance of services for cities which usually are left in local hands. The Massachusetts civil service commission is placed in direct charge of civil service examinations for every city in the state, and in New Jersey and Maryland the state commissions perform the same function for cities which desire such service. Police administration in a few cities, notably Boston, Kansas City, St. Louis, and Baltimore, is under the control of state-appointed authorities. A state agency is charged with the sale of municipal bonds in North Carolina and in West Virginia the State Sinking Fund Commission certifies the amount of local money required for debt service and handles payments of interest and principal.

The permanence of these arrangements distinguishes them from substitute administration which is temporary and contingent on the existence of certain conditions. They differ from state services which are rendered now and then at local request because the state assumes full and continuous responsibility for the administration of functions which usually are discharged by the city government.

Although a contrary impression may have been created by the citation of numerous examples, state administrative control of cities still remains relatively limited in extent. The most widely established controls are non-compulsory in character, and frequently even compulsory control may be exercised only after the initiative has been taken by local residents. Some-

times, too, the decisions of state authorities may be overridden by a popular vote in the city, as provided in North Carolina in connection with the disapproval of proposed bond issues.

It also is noteworthy that in practice controls provided by law are not always exercised or often are wielded in a perfunctory manner. This situation sometimes is due to the intensity of local opposition and to political considerations of one sort or another. Sometimes it is attributable to the indifference of state officials or to lack of the staff and the funds necessary to exercise control in an effective manner.

In the foregoing pages each of the major methods of control and supervision has received separate consideration. It remains to be pointed out that various combinations of several types of control commonly are provided in regard to a specific activity. Thus a state tax commission may collect information, give advice, inspect and investigate, review local action, and issue orders and ordinances in the matter of property assessments, or a state health department may receive reports, provide technical assistance, approve or disapprove of proposed plans, and make rules and regulations concerning contagious disease control.

Some methods of control are so intimately related that the establishment of one without the others undoubtedly is impracticable. For example, the power to issue orders necessarily requires authority to investigate and inspect.

**Indiana, New Jersey, and North Carolina Plans.** State administrative control is established primarily to safeguard the interests of the state in matters of general concern and secondarily to protect urban communities from abuses of power by local authorities. Whatever the paramount purpose, it seldom has included the power to interfere with local action merely because of difference of opinion concerning the wisdom or expediency of pursuing particular policies. A few states, viz., Indiana, Iowa, New Jersey, New Mexico, and North Carolina, have gone farther in this respect than any others, principally in the financial field.

Under the Indiana plan the state board of tax commissioners may review the proposed action of local taxing officials and revise or reduce appropriations, tax levies, and bond issues. It also may forbid the issuance of bonds. In exercising its powers, it is free to follow its own judgment concerning the needs of a unit of local government after considering fully the value of all the property of the municipality, its indebtedness, and its general economic condition. Under special circumstances, it even may raise a tax levy.<sup>7</sup>

Ordinarily, the commission is entitled to act only if appealed to by ten or more property owners who contend that local officials are proposing to expend more money than would be necessary if the government were eco-

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<sup>7</sup>In each county there is a county tax adjustment board which possesses authority to permit a local tax rate above statutory limits if an emergency exists. If local governments propose a rate which this county board disallows, the state commission may provide for an increase within the limits originally fixed by the local legislative body.

nomically administered or claim that bond issues for public improvements are unwarranted, excessive or extravagant.<sup>8</sup>

Opinion is divided concerning the beneficial effects of the plan. Its proponents claim that it has resulted in substantial savings for taxpayers, but its critics argue that the asserted savings are more apparent than real and that the plan as administered has encouraged unsound financial practices on the part of local units.<sup>9</sup>

By legislation enacted in 1931 and subsequently amended, North Carolina created a local government commission<sup>10</sup> endowed with significant authority in relation to the financial affairs of local governments. Its most important and widely used powers are approval of applications for bond and note issues, the advertising and sale of municipal bonds, and the handling of debt refunding and readjustment plans.<sup>11</sup> In acting on contemplated long or short-term borrowing, the commission may be guided by the financial condition of a municipality and by considerations of wisdom or expediency. However, the voters of a community may override its disapproval of a proposed bond issue.

If a refunding plan is placed in operation, the director of local government has power to supervise and approve the local budget for such time as he deems necessary. Moreover, he may appoint an administrator of finance to take charge of the financial affairs of a defaulting city.<sup>12</sup> Under an alternative procedure, the appointment of an administrator occurs with court approval following a petition by the holders of 51% of a municipality's bonds one year after default takes place.

According to observers, the North Carolina plan, which involves an unusual degree of supervision over local finance, has proved successful in preventing much unwise borrowing, in bringing about the sale of municipal bonds on more satisfactory terms, in improving sinking fund investments, and in effecting savings by supervising auditing contracts. The commission has failed to utilize some of its powers, due partly to political reasons and to the handicap of limited funds and an inadequate staff, but also because of

<sup>8</sup> Automatic review occurs if a county tax adjustment board fails to set a rate within statutory limits. Moreover, any ten taxpayers or the local legislative body may appeal from the action of the county board which, by reason of its power to revise, change, or reduce specific items of a budget, has become the final local appropriating agency.

<sup>9</sup> The plan is described and appraised in E. E. Warner, "A Study of the Indiana Plan of Budgetary Review", *Legal Notes on Local Government*, Vol. IV, No. 5, March, 1939, pp. 279-296; C. R. Dortch, "The Indiana Plan in Action", *National Municipal Review*, Vol. XXVII, No. 11, November, 1938, pp. 525-529; F. Zoercher, "The Indiana Scheme of Central Supervision of Local Expenditures", *National Municipal Review*, Vol. XIV, No. 2, February, 1925, pp. 90-95.

<sup>10</sup> The commission is composed of the state treasurer, the secretary of state, the state auditor, the commissioner of revenue, and five part-time members appointed by the governor, with the state treasurer acting as chairman of the commission and director of local government. An assistant director serves as the commission's secretary and as the active day-to-day head of its staff. The four *ex officio* members constitute an executive committee.

<sup>11</sup> Other powers include supervision of the investment of sinking funds and the safeguarding of current funds, the supervision of auditing contracts, the approval of bills for auditing services, the power to prescribe a uniform accounting system, and authority to require financial reports.

<sup>12</sup> No use has been made of this power,

the conviction that the best results will be achieved through advice, counseling and assistance.<sup>13</sup>

New Jersey's Division of Local Government is located in the state's Department of Finance and Taxation. It consists of a commissioner of local government and a local government board of which the commissioner is chairman. The commissioner is the administrative agent of the Division. In this capacity he advises and instructs local officials, investigates the financial condition of municipalities, and administers the laws of the state with respect to local finances. The board establishes policies within the scope of the Division's authority, advises the commissioner, reviews his determinations, publishes reports, and bears the responsibility of studying the entire field of local government and making recommendations to the legislature and the governor.

In general, the Division possesses sufficient authority under existing legislation to achieve rather strict regulation of local budgeting, borrowing, and financial procedure. It may prescribe the form, classification, and details of budgeting and financial reporting, certify budgets, enforce local levies to reduce deficits, prescribe a uniform accounting system, supervise audits, certify registered municipal accountants for auditing purposes, and conduct tax sales if local authorities neglect to do so.

Moreover, it is authorized to approve local refunding operations and to administer the financial affairs of municipalities which develop an unsound financial condition. The criteria of an "unsound financial condition" are defined by law as follows: (1) default in the payment of debts; (2) a budget deficit for two years in excess of a designated percentage of the tax levy; (3) an excessive floating debt; (4) excessive tax delinquency; and (5) failure to make payments which are due to the state or other governments.<sup>14</sup>

The results of the New Jersey plan appear to be satisfactory from the standpoint of the state, its municipalities, and the general public.<sup>15</sup> Perhaps its most valuable feature will prove to be the local government board's duty to carry on continuous investigation and research with respect to the problems of local governments.

**Claimed Advantages and Disadvantages of Administrative Control.** In considering claimed advantages and disadvantages, care should be exercised to confine the discussion to an appraisal of administrative as compared to legislative control. Only too frequently many of the arguments pro and con seem to be based on the erroneous conception that the issue at stake is

<sup>13</sup> See B. U. Ratchford, "The Work of the North Carolina Local Government Commission", *National Municipal Review*, Vol. XXV, No. 6, (June, 1936, pp. 323-327; J. W. Fessler, "North Carolina's Local Government Commission", *National Municipal Review*, Vol. XXX, No. 6, June, 1941, pp. 327-334.

<sup>14</sup> S. D. Hoffman, "A State Department of Local Government", *National Municipal Review*, Vol. XXVIII, No. 5, May, 1939, pp. 348-354; J. F. Sly, H. F. Alderfer, and V. D. Brannon, "Watchdogs of Local Finance", *National Municipal Review*, Vol. XXXVI, No. 7, July, 1947, pp. 382-388; Committee on State-Local Relations, *op. cit.*, pp. 37-38; J. H. Marlon, "State Supervision in New Jersey over Municipalities in Unsound Financial Condition", *American Political Science Review*, Vol. XXXVI, No. 3, June, 1942, pp. 502-508.

<sup>15</sup> R. C. Hendrickson and A. A. Burger, "New Jersey Reaps Fruits of Good Municipal Finance Laws", *National Municipal Review*, Vol. XXXII, No. 8, September, 1943, pp. 419-422.

state control versus municipal freedom. The actual problem, assuming agreement on the question of the justifiable degree of state intervention in the affairs of cities, is to determine in what ways administrative control is either superior or inferior to legislative regulation.

Those who favor the expansion of administrative control with a corresponding curtailment of detailed legislation for cities assert that it is preferable to legislative action in a number of respects. Stress is laid on its: (1) continuity, (2) flexibility, (3) effectiveness, (4) close personal contacts, (5) expert quality, and (6) preservation of local freedom. Attention also is directed to a beneficial consequence of an incidental type, viz., lightening the work load of the state legislature.

The reason for the greater *continuity* of administrative as contrasted with legislative consideration of local problems is obvious to anyone. Legislatures are in session only for short periods of time at infrequent intervals, whereas administrative officials are on the job week after week throughout the year. The administrative eye is open at all times. Continuous supervision is advantageous inasmuch as prompt attention may be given to problems as they arise. It also accounts in part for some of the other merits of administrative control, viz., effectiveness, closer contacts, and expert quality.

The *flexibility* and *effectiveness* of administrative control are largely attributable to the nature and variety of the forms which it assumes and to the fact that these forms permit special treatment of the problems peculiar to particular municipalities. Its superiority to legislative regulation in these respects is easily demonstrated.

A legislature which has been denied the power of special legislation is compelled to deal with cities by general law. As previously pointed out, general laws applicable to all cities in a state or to all of a class, if too detailed, seldom are satisfactory in all respects for every city. Moreover, neither general nor special acts prove adaptable to all of the innumerable situations which develop in municipalities, no matter how carefully they may have been drafted. The amendment of old laws and the enactment of new ones are constant occurrences, but legislative action always lags behind actual need.

Legislative regulation is not only too rigid, but also limited in its effectiveness. A legislature may authorize cities to own and operate municipal lighting plants, but it cannot, by law and judicial enforcement thereof, insure that such enterprise will be undertaken only under conditions which justify the expectation of success. Nor can wise and sound management be legally guaranteed. If, however, authority to embark on such a venture be conferred on cities and combined with appropriate types of administrative supervision and control, an arrangement is provided whereby the needs and circumstances of each city may receive proper consideration and adequate steps may be taken to promote efficient operation.

The common remedy for municipal extravagance has been the imposition of tax and debt limitations by constitutional or statutory provision. Experience has proved this device to be ineffective and even harmful in that it has

given rise to unsound practices of various types. Moreover, it seems obvious that limitations fixing maximum tax rates and amounts of indebtedness which apply uniformly to all cities or to all of a class are unduly rigid. No heed is paid to the resources of a particular city, its financial condition, the quality of its government, the extent of its services, and the purpose of contemplated expenditures or proposed bond issues.

Limiting rates and amounts, or even purposes, is no insurance that taxing and borrowing powers will be exercised wisely. A more flexible and effective plan is to rely on administrative controls similar to those which have been established in Indiana, New Jersey, and North Carolina. Administrators are in a better position than legislatures and courts to prevent misuses of local discretion and to provide guidance along the path which leads to good government.

By reason of its continuity and its character, administrative control permits *closer contacts* and *more personal relationships* between state and city officials. The occasional contacts and impersonal transactions which are involved in the appearance of city officers before legislative committees to advocate or oppose the adoption of bills, or in buttonholing individual representatives and senators for the same purpose, hardly are comparable to the relations which may be developed with administrative officials, under entirely different conditions, through the discussion of particular city problems as they arise. The visitation of cities by administrators, for example, affords an excellent opportunity for obtaining first-hand information and for winning the confidence and good will of local authorities.

Administrative agencies are said to be *better informed* than legislatures and far *more competent* to judge city needs and to handle the technical aspects of municipal administration. The ordinary legislator is a layman. Specialists and trained technicians should be available in the administrative branch of the state government, but whether this actually proves to be the case depends on the personnel policy in effect. The spoils system still prevails in many states. Nevertheless, the chances of obtaining expert control are fairly good.

Another advantage claimed for administrative control is that broader powers may be granted municipalities with assurance that state interests will be adequately protected. Instead of enumerating the powers which cities may exercise and prescribing the detailed procedures to be followed, a blanket grant of power to deal with matters of local concern, including free choice of means and methods, might be conferred on municipalities. Appropriate administrative controls could be established to prevent abuses of discretion. In this way, cities would be relieved from numerous annoying, restrictive, and unduly rigid statutory provisions. There is, of course, the possibility that administrative agencies might interfere to an unwarranted extent in local affairs. Power to prevent abuses could itself be abused.

Finally, a sound system of administrative control will partly relieve legislatures of the great burden of legislating for cities. The time thus saved may be devoted to the solution of other problems. Since the typical legislature

has more work than it can handle effectively in the time at its disposal, favorable consideration should be given to an arrangement, beneficial in other respects, which would lighten the load to be carried.

The opponents of administrative control view it with alarm for a variety of reasons. Chief among them are: (1) the conviction that it seriously threatens the survival of local autonomy; (2) the opportunities which it affords for discriminatory, arbitrary, and tyrannical action; (3) lack of faith in the competence of state administrative agencies.

Perhaps the major objection to administrative supervision and control is that administrators, even more so than legislatures, will interfere to an ever-increasing extent in local affairs, thus reducing local autonomy to a minimum and diminishing the local sense of responsibility for governmental conditions. It is feared that an administrative bureaucracy will prove more objectionable in many ways than the legislature and that administrators are just as likely to be subservient to seekers of special privilege. Even though it be intended to confine administrative supervision to matters of state concern and to the maintenance of minimum standards, there probably will be endless dispute concerning the scope of administrative authority. It will prove exceedingly difficult to prevent encroachment on fields of action in which local discretion should prevail. In this country as in others, the ultimate outcome will be the acquisition of more and more power by administrative agencies.

A closely related ground for opposition to administrative control is that its flexibility will open the door to arbitrary action and permit discriminations against particular cities similar to those which developed in connection with the device of special legislation. Single cities will be unable to protect themselves against arbitrary, prejudiced, overbearing, and unscrupulous administrators. In short, administrative tyranny is more to be feared than the abuse or misuse of power by legislatures.

The point also is stressed that state administrative officials are no more likely to be well-informed, competent, or conscientious than those of the city. Unless they are, nothing will be gained by subjecting the city to an outside control of the type in question. Why substitute the judgment of one group of officials for that of another in the absence of conclusive evidence that it will prove superior in quality? Even competent state officials, being outsiders, will be unable to acquire the knowledge and understanding of local conditions and problems normally possessed by city authorities.

**Comment.** The difficulty with many arguments for and against administrative control is that they are based on general considerations and fail to make allowance for many factors of a variable character. In particular, the weight of specific arguments pro and con is affected by the type of administrative control which is contemplated and by the nature of the municipal functions to be subjected thereto. Certainly, both advocates and opponents should discriminate between compulsory and non-compulsory forms of control.



Caution should be exercised about accepting the experiences of a particular state as conclusive evidence of the probable success or failure of administrative controls. A plan which has worked well in one state may prove unsatisfactory in another, or vice versa, for reasons which are not inherent in any particular mode of control. It is essential to isolate all causative factors. Much depends on prevailing traditions with respect to the essentials of local self-government, city-state relations, and standards of public service.

All persons probably will agree that the success of administrative control is largely dependent on the motives and the caliber of the official personnel entrusted with its exercise. If administrators are properly trained, experienced, honest, tactful, patient, and sympathetic, good results may be expected, but if they are incompetent, arrogant or dishonest, and arouse the antagonism of city officials, evil consequences will outweigh the good. Perhaps the most essential requirement is that state officials be appreciative of the values of local autonomy. Otherwise they are likely to fulfill the expectations of those who view administrative supervision and control as a major threat to local self-government.

That cities should be subjected to state control in matters which are not of purely local concern is a proposition which seldom is questioned, and that state supervision of strictly municipal affairs also might prove beneficial under certain conditions is evident enough. It is equally clear that no one agency of control is sufficient in itself or so superior to all others as to warrant its exclusive use.

The problem, then, is to confine each agency to the purposes for which it is best suited and to develop an effective combination of legislative, judicial, and administrative controls. Heretofore, too much emphasis undoubtedly has been placed on the enactment of laws by legislatures and their enforcement by the courts through the process of litigation.

Recent years have been marked by a growing appreciation of the necessity for and the advantages of administrative supervision and control. However, the most authoritative opinion favors chief reliance on the techniques of persuasion, counseling, and service. Cooperation should be given the right of way over constraint. Coercive controls should be available for use under extraordinary conditions, but only if surrounded by safeguards which will prevent unwarranted inroads on local autonomy.

If state administrative officers be chosen on a merit basis and if they perform their functions well and discreetly, the development of local confidence in their good judgment and integrity will eliminate the need for frequent resort to compulsion. A genuine cooperative spirit on the part of both state and local officials constitutes the most durable foundation for mutually satisfactory city-state relations.

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## CHAPTER IX

### FEDERAL-CITY RELATIONS

#### *Outline*

- Essential Nature of Federal-City Relations
- Federal Administrative Tools
- Fields of Federal-City Relations
- Federal Agencies Serving Cities
- Types of Relations
  - Advisory, Consultative, and Informative Relations
  - Cooperative Action
  - Financial Assistance
  - Rendition of Special Services
  - Regulatory Relations
  - Miscellaneous Relations
- Federal-City Relations in the Future

THE LEGAL position of the Federal Government with respect to cities differs fundamentally from that of the states. As previous chapters have shown, the latter may create and abolish municipal corporations, prescribe their organization, powers, and procedures, and regulate them to any extent and in any manner deemed expedient, subject only to such restraints as arise from the Constitution of the United States.<sup>1</sup> The Federal Government enjoys corresponding authority only in regard to municipalities located within the District of Columbia and other territorial possessions, i.e., outside the area falling within the boundaries of the 48 states. Cities situated in the states<sup>2</sup> are in no sense legal creatures of the national government. Nevertheless, the powers which have been delegated to Congress, either expressly or by implication, provide a legal basis for numerous policies which in one way or another affect these municipalities as bodies politic.

Contacts between the Federal Government and cities are far more numerous and much more significant than many people believe them to be. The current situation is the result of an evolutionary process in the field of public policy which had its origin in the early history of the country. Until 1900, federal-city relations grew rather slowly, but thereafter, especially from 1932 onwards, largely as a consequence of economic depression and war, they increased rapidly in number and variety. In all probability this trend will continue in the years to come.

<sup>1</sup> The powers of the state government, as distinguished from those of the state, are in addition subject to the restrictive provisions of the state constitution.

<sup>2</sup> This chapter is concerned solely with relations between these cities and the Federal Government. Federally-built municipalities, although "situated in the states", are not part of a state's system of local government. Examples of the few Federal projects of this type are Boulder City, Nevada, and the former town of Norris, Tennessee.

Relationships necessarily arise among the various governments serving the people in a dynamic society characterized by a high degree of social solidarity. Many problems which require governmental attention have national, state, and local aspects. Their adequate solution necessitates cooperative action on the part of all levels of government. Cities and other local units have found it expedient to look toward Washington as well as in the direction of the state capital, and the powers-that-be in Washington are becoming increasingly aware of the interlocking character of national, state, and local interests. The relationships of the past and present and those anticipated for the future represent a response to the social, economic, and political needs of the country.

#### ESSENTIAL NATURE OF FEDERAL-CITY RELATIONS

Basically, the relations between the national government and cities are non-coercive in character. For the most part, Uncle Sam may advise, counsel, assist or serve, but not compel. Of course, cities as well as states are obliged to conform to the Constitution and the laws enacted in pursuance thereof. Consequently, they must abide by national policies as prescribed by Congress within the scope of its delegated authority, submit to the jurisdiction of federal courts in certain classes of cases, and refrain from interfering with the legitimate operations of national agencies. This subservience is quite consistent with their legal freedom from national control in their capacity as bodies politic and corporate.

By virtue of the present distribution of governmental powers between the states and the nation, legislative control of cities and administrative regulation involving the element of compulsion are virtually a state monopoly. Such special circumstances as enable national authorities to exercise coercive control will be discussed subsequently. The fundamental differences between city-state and federal-city relations are exemplified by the fact that state legislation is necessary to empower cities with an indebtedness approaching statutory limitations to take advantage of loans which the Federal Government is willing to make. In 1934, to cite another example, President Roosevelt requested the governors of the several states to bring about the passage of laws which would enable cities and other local units to participate in and to secure the benefits of the public works phase of the recovery program. The states alone could remove restrictive legislation which hindered if it did not prevent full participation.

In spite of fundamental legal differences, city-state and federal-city relations resemble each other in many respects. For instance, the conditional grant-in-aid is used by both the national government and the states in dealing with cities. Again, state administrative agencies collect information pertaining to local units, give advice, and render services. So do federal agencies. As a matter of necessity, most federal-city relations are carried on by administrative bodies and maintained on a purely non-compulsive basis. By choice rather than legal necessity, the techniques of persuasion and

service also are utilized by the states to an appreciable extent in the administrative supervision and control of municipalities.

The transactions between the Federal Government and cities may be either direct or indirect. Indirect relations arise when national authorities deal with local units through the states. Until 1932, for example, federal financial aid reached municipalities only in this way. Direct relations involve a short-circuiting of the states. Federal officials maintain relations with cities without utilizing the state as an intermediary. Thus, after 1932, financial assistance often was given directly to cities.

#### FEDERAL ADMINISTRATIVE TOOLS

Consideration of the administrative methods and devices of work used by federal agencies in their contacts with cities indicates rather clearly that federal-city relations are based on the principles of aid, guidance, and cooperation rather than coercion. The concrete character of these relationships is revealed by the tools of administration on which, for the most part, national authorities find it necessary to rely.

In the first place, extensive use is made of research publications, statistical and news reports, periodicals, handbooks, and model ordinances suggested for local adoption. Material of this type not only furnishes information to municipalities and their officers, but also serves as an instrumentality for guidance and for the establishment of standards. Secondly, federal-city relations frequently involve correspondence, conferences, and field consultations which obviously are suitable means of conveying information, giving advice, rendering assistance, and promoting cooperative action. A third group of techniques includes surveys, cooperative investigations, the training of local personnel, the lending of national personnel, laboratory service, the furnishing of supplies, the sale of services and commodities, and demonstration projects. Another administrative method, in some respects the most important of all, is the formal or informal agreement between the Federal Government and either the states or cities.<sup>8</sup>

The device of the formal contract has been used with effectiveness by national authorities as a means of implementing grants-in-aid of the conditional type. It is almost entirely through the contract that the Federal Government is able to utilize such administrative methods and devices as approval, review, audit, inspection, and the stipulation of standards.

A municipality may accept or reject a contract involving submission to types of supervision and control which the Federal Government otherwise would lack authority to exert. If accepted, the contract becomes the basis for controls which are truly coercive in character. Unlike the national government, a state need not resort to contracts in order to impose its will on the cities within its jurisdiction.

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<sup>8</sup> Administrative methods and devices of work are discussed at some length in *Urbanism Committee, Urban Government, Supplementary Report of the Urbanism Committee to the National Resources Committee*, Washington, Government Printing Office, 1939, Vol. I, pp. 84-86.

Federal contracts with cities normally relate to individual projects, e.g., the construction of a sewage treatment plant or the sale of water. Contracts concerning regularly recurring services generally are entered into with the states. The state then becomes the intermediary between cities and federal authorities in the event that the contract pertains to services in which municipalities participate.

#### FIELDS OF FEDERAL-CITY RELATIONS

Federal-city relations, direct or indirect, have developed in a surprisingly large number of fields of municipal activity. A complete list probably would include every major municipal function as well as a multitude of minor ones.

Federal services of one variety or another are available to cities and their officials in such broad fields as finance; police and fire protection; public health; social welfare; housing; education; libraries; sewerage; water supply; parks and recreation; personnel administration; city planning and zoning, and utilities. Particular activities, many of which fall within the foregoing general categories of municipal functions, include weights and measures, building and plumbing regulation, smoke abatement, dairy sanitation and milk control, street lighting, streets, traffic regulation, purchasing, rat control, harbors and docks, and airports.

The character of federal-city relations in connection with these and other municipal activities varies greatly. Their extent is on the whole minor. In most instances, federal services to municipalities have developed as side-line or incidental activities of national agencies which Congress established with the welfare of the nation in mind. The primary motive of Congress was not one of service to cities. In fact, more often than not, no thought was given to municipal problems. Nor is service to cities the chief function of the federal agencies through which contacts are maintained.

#### FEDERAL AGENCIES SERVING CITIES

The federal agencies engaged in serving cities are as many and as varied as the fields within which relationships have developed. Approximately 70 carry on activity of some type which has an important bearing on local government. There is no national department or bureau of municipal affairs. Even within a particular functional field, dispersion of service among two or more agencies is the rule rather than the exception. This situation is partly the result of the haphazard and incidental manner in which federal-city relations have come into being.

Among the many agencies now serving or maintaining direct or indirect relations with cities are: the Bureau of the Census, the Civil Service Commission, the Office of Education, the Public Health Service, the National Housing Agency, the Federal Communications Commission, the Federal Power Commission, the Forest Service, the Fish and Wild Life Service, the Bureau of Land Management, the Bureau of Reclamation, the Bureau of

Mines, the Bureau of Standards, the Public Roads Administration, the Federal Works Agency, the Tennessee Valley Authority, the Civil Aeronautics Administration, the Weather Bureau, and the Bureau of Investigation. This list, although incomplete, is sufficiently long to give one an idea of the bewildering variety of agencies participating in the Federal Government's dealings with municipalities.

### TYPES OF RELATIONS

An exhaustive study of federal-city relations would require presentation of complete information concerning all of the many phases of this significant subject.<sup>4</sup> Brief consideration has been given to the national agencies which are involved, to the functional fields within which relationships have developed, and to the administrative methods and devices which are utilized.

Perhaps the most important aspect of the matter is the character of federal-city relations from the standpoint of the ways in which cities are affected or influenced by the activities of federal agencies. An examination of the various types of relations from this angle reveals the limited extent to which the element of compulsion enters into federal-city contacts. Although the coercive factor is on the whole negligible, cities are bound, under certain circumstances, to submit to federal regulation whether they like it or not.

The basic types of relation may be classified as follows: (1) advisory, consultative, and informative; (2) cooperative action; (3) financial assistance; (4) rendition of special services; (5) regulatory relations; (6) miscellaneous. All but the last two of these categories might be grouped together under the broad heading of "federal services to municipalities" and practically all of them are cooperative in nature.

**Advisory, Consultative, and Informative Relations.** *Advisory* and *consultative* relations assume different forms and arise under a variety of circumstances. Conferences, consultations, written communications, formal reports, manuals, and model ordinances represent different ways in which technical guidance and advice may be given, either on the initiative of federal organs or at the direct request of city officials.

By way of illustration, attention is directed to the expert advice frequently given local boards of education and school superintendents by the Office of Education; to conferences held with city health officers by the personnel of the Public Health Service on various local problems of sanitation; and to the advisory and consultative functions of the Bureau of Dairy Industry in regard to dairy and milk control. The Bureau of Standards has prepared useful primers, manuals, or model ordinances which have served as guides for cities and their officials in various fields of activity, such as

<sup>4</sup>The leading studies are: P. V. Betters, *Federal Services to Municipal Governments* (New York, Municipal Administration Service, 1931); P. V. Betters, J. K. Williams, S. L. Reeder, *Recent Federal-City Relations*, (Washington, United States Conference of Mayors, 1936); Urbanism Committee, *op. cit.*, Parts II and III. A summary of current developments usually is included in successive issues of the *Municipal Year Book*. The student also should consult W. Anderson, *Federalism and Intergovernmental Relations: A Budget of Suggestions for Research*, (Chicago, Public Administration Service, 1946).

zoning, city planning, building regulation, plumbing, weights and measures, and traffic regulations. Examples of formal conferences held occasionally or regularly and participated in by local as well as national and state officials are the National Conference on Weights and Measures, the Attorney-General's Conference on Crime, and the National Conference on Street and Highway Safety.

Many federal agencies *collect and disseminate information* of a statistical character or *publish reports* embodying the results of research projects of various types. These sources of information often prove helpful to city authorities in solving problems with which they are confronted. Among the more important of the numerous agencies which provide information for city governments are the Federal Bureau of Investigation, the Public Health Service, the Bureau of Standards, the Office of Education, and the Bureau of the Census.

The National Division of Identification and Information of the Bureau of Investigation serves as a clearing-house for information concerning criminals. It collects and maintains fingerprint records and publishes a quarterly bulletin, *Uniform Crime Reports*, which is devoted to crime statistics.

Among the numerous publications or reports of the Bureau of Standards are commodity specifications and lists of manufacturers willing to certify that their products comply with federal specifications or standards. These lists and specifications are widely used by city purchasing agents.

The Bureau of the Census has become a national information center concerning the organization, activities, and finances of state and local governments. Its publications include *City Finances* (annually); a quarterly *Government Employment* report; *Governmental Units in the United States* (1944); and the decennial *Census of Governments*, formerly known as *Wealth, Debt, and Taxation*, which presents the principal financial data concerning all units of government in the United States.

The National Resources Board, no longer in existence, published two significant reports pertaining to cities, *Our Cities, Their Rôle in the National Economy* (1937) and *Urban Government* (1939). These publications and the others mentioned above are merely samples of the extensive informational and research activities of national authorities in fields of local concern. The provision of information is one of the most important services of the Federal Government in behalf of cities.

**Cooperative Action.** In many instances, federal and city authorities cooperate in dealing with situations and in administering policies which fall within functional fields of mutual interest. Various problems have national, state, and local phases. Sometimes collaborative action is indispensable to the solution of a particular problem; again, it may be merely expedient, desirable, or convenient.

The task of dealing with crime has assumed such proportions that state and local governments are unable to discharge it effectively without help from the national government. Scientifically-equipped criminals are able



to carry on their activities without being hampered by the boundary lines within which, generally speaking, the jurisdiction of state and local law-enforcing officers are confined. The national government has taken action to alleviate the situation. Congress has enacted a series of laws, chiefly in the exercise of its taxing and commerce powers, which have extended federal authority to certain types of crime.<sup>5</sup> Legislation of this type provides a legal basis for collaboration on the part of the FBI and local police forces in the apprehension and prosecution of criminals. In many additional ways, a few of which are mentioned in other paragraphs, the Federal Government has joined hands with state and local authorities in the drive against crime.

Cooperative action occurs in numerous other fields. During the depression period, states and local units teamed up with the national government in various programs undertaken to achieve relief, recovery, and reform. Specific illustrations are the administration of direct relief, the execution of the public works program, and the administration of the Social Security Act. In the course of the war, local units cooperated with national authorities in carrying out various phases of the national defense and war programs, e.g., the establishment of local defense councils, provision of housing facilities and recreational services in defense and war production communities, health protection, and price and rent control. The Bureau of Animal Industry and the Food and Drug Administration collaborate with local officials in the enforcement of laws concerning the inspection of meat and the manufacture and sale of foods and drugs. Under the Public Health Service Act of 1944, the Public Health Service renders assistance to counties, health districts, and other political subdivisions in the establishment of adequate health services and in the training of personnel.

**Financial Assistance.** The federal policy of furnishing financial assistance to local units, either directly or indirectly, creates relationships which often involve coercive controls. In some instances, loans and grants are made directly to cities; in others, state governments are the direct recipients of grants-in-aid from which cities and other local units benefit in varying degrees through reallocation by the states.

The conditions under which money will be loaned or granted are prescribed by the Federal Government. In this way it is able to control objectives, procedures, standards of administration, personnel policies, and other matters which otherwise lie beyond its power of regulation. Legally, the states and cities are free to reject conditional financial assistance. For this reason, if they accept aid, their submission to national control is in principle voluntary rather than compulsory in nature.

However, especially during periods when state and local governments

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<sup>5</sup> It is a federal offense to rob a national bank or Federal Reserve member bank through force or violence; to interfere by threats, violence, or coercion with the free flow of commerce between states and with foreign nations; to engage in an interstate conspiracy or to use the instrumentalities of foreign and interstate commerce in connection with kidnapping, the theft of motor vehicles, or the stealing of other property with a value of \$5,000 or more. Another crime against the Federal Government is fleeing from one state to another to avoid prosecution for designated felonies, e.g., burglary, robbery, and murder, or to avoid giving testimony in criminal proceedings.

are desperately in need of revenue, the pressure of circumstances may prove so great that refusal of conditional financial assistance becomes exceedingly difficult. Moreover, a potent psychological factor operates in behalf of acceptance. The residents of cities bear a substantial part of the burden of national taxation and naturally desire to obtain their share of the melons which Uncle Sam is willing to cut.

One of the conditions usually attached to grants is that the state or local unit must match the amount or make some designated contribution from its own funds. Other conditions are likely to include submission to certain controls which the Federal Government deems necessary to insure that its grants will be used in a proper manner to achieve the objectives which it has in mind.

The grants-in-aid policy of the national government originated many years ago. Grants of land for school purposes date back to the post-revolutionary period. Financial assistance in road construction, although only for the main highways of states, first was provided under the Federal Aid Road Act of 1916. Grants for vocational education and rehabilitation began with the passage of the Smith-Hughes Act of 1917.

The greatest expansion in the policy of financial assistance occurred during the years following 1931. During this period, too, the Federal Government for the first time gave aid directly to local units and thereby instituted a new pattern of federal-local relations. In a study of federal-city relations published in 1936, the authors assert: "Now, for the first time in American history, cities are the recipients of direct Federal benefits without the necessity of having the Federal monies funneled to them through the state governments. More important, still, the municipalities, as beneficiaries of direct Federal aid, have had to assume responsibility for spending the money in accordance with regulations and restrictions formulated in Washington."<sup>6</sup> However, the funneling of funds to local units through the states continues to be an important practice.

The policy of financial assistance has been pursued in various functional fields. Outstanding examples are afforded by the series of acts which Congress passed in the effort to solve the problems of relief, recovery, and reform. The Emergency Relief and Construction Act of 1932 authorized loans to local governments for self-liquidating public works projects and for relief purposes; the Federal Emergency Relief Act of 1933 provided relief grants for the states which subsequently were apportioned among local relief agencies; and the National Industrial Recovery Act of 1933 and later legislation enabled the President to create the Public Works Administration which made grants and loans directly to local units for the construction of schools, hospitals, sewerage systems, and other public works. The Social Security Act of 1935 established the policy of providing federal money which reaches local units through the states for such purposes as aid to dependent and crippled children, assistance for the aged and the blind, child welfare maternal and child health, and various other health activities.

<sup>6</sup> P. V. Betters, J. K. Williams, S. L. Reeder, *op. cit.*, p. 136.

In 1936 Congress passed the George-Deen Act which extended the long-standing policy of aid for vocational education to in-service training for public officials. More recently, financial assistance has been provided specifically for streets in urban areas (Federal Highway Act of 1944), for developing local plans for postwar construction projects (War Mobilization and Reconversion Act of 1944), and for the acquisition of land for and the construction of airports by local units (Federal Airport Act of 1946).

As previously observed, the granting of financial assistance enables the Federal Government to exercise controls which are binding in character. A city is required to live up to the conditions which are attached to grants. For instance, in order to obtain PWA funds cities had to accept accompanying stipulations and conditions which included approval of municipal projects in detail by federal authorities, observance of wage and hours schedules and other conditions of employment, the inspection of work and the auditing and review of financial transactions by federal officers, and the payment of reasonable prices for technical and engineering plans. The Federal Government's purpose was to secure the achievement of minimum standards and the fulfillment of the policies which it had in mind. It undoubtedly was justified in its endeavor to prevent misuse of the monies which it saw fit to distribute.

The Hatch Act of 1939, as amended in 1940, affords an example of the way in which grants may be utilized to impose restrictions which have a different objective. This measure prohibits pernicious political activity on the part of non-policy-making state and local employees whose principal employment is in connection with any activity which, in whole or in part, is financed by loans or grants provided by the Federal Government. In this case the regulatory power extends to employees rather than directly to units of government, but it arises from acceptance of financial aid by the latter.

Abandonment of the policy of financial assistance seems unlikely. The odds probably favor an expansion of the conditional aid program, especially during periods when cities are seriously in need of funds. Many problems confronting the country call for cooperative action on the part of national, state, and local governments. An example of the type of policy that might be pursued in the future is afforded by the Taft-Ellender-Wagner bill which has been placed before Congress several times. This measure is designed to provide a long-range solution of the housing problem. Its primary aim is to encourage construction under private auspices, but it includes plans for federal subsidies to local housing authorities over a period of 45 years and for loans and grants to assist cities in the development of blighted areas and in the acquisition of land for housing projects.<sup>7</sup> Although this "public housing" part of the bill so far has failed to receive the approval of Congress, the long-term feature of the proposal is particularly significant.

**Rendition of Special Services.** Federal agencies sometimes perform a

<sup>7</sup>For a brief summary see H. M. Olmstead, "Housing Crisis Challenges Government", *National Municipal Review*, Vol. XXXVI, No. 6, June, 1947, pp. 329-330.

specific service for cities, usually at the latters' request and with respect to some particular problem. The rendered service is not merely informatory or advisory in character. It involves the doing of work which a city might do itself or have some private agency or other government do for it.

The FBI maintains a National Police Academy which may be attended by selected local police officers. This academy, which began operations in 1935, serves as a normal school for city policemen who in turn offer instruction to members of their own force. The Bureau also conducts fingerprint identification schools in its district offices and operates a scientific testing laboratory which serves local units by analyzing evidence collected at the scene of a crime.

The United States Civil Service Commission makes eligibility lists available to cities and other local units, provides copies of examinations on request, and occasionally devises and conducts examinations for cities at their expense. Again, the Bureau of Reclamation sells power and water to cities and the Tennessee Valley Authority sells power to municipalities within the area of its operations. The TVA's contracts of sale prescribe the resale rates which the city is to charge the ultimate consumer and also provide for strict supervision over the accounts, methods, and operations of the municipal distributing agency. As in the case of conditional financial assistance, the contract is used as an instrumentality for the establishment of compulsory controls.

For final illustration of the rendition of special services, attention is directed to the surveys sometimes undertaken by the Office of Education and the Public Health Service. Normally, the survey of a school system or of some community health problem is requested by a particular city. The desired survey is made only if the appropriate federal officials view the project with favor. Obviously, the city which applies for such service is a major, although not the sole, beneficiary of the investigation which takes place.

**Regulatory Relations.** The Federal Government has authority to compel cities and other local units to conform to national policies established in the exercise of its constitutionally delegated powers. This regulatory power differs in its legal basis from that which is derived from contractual agreements or from local acceptance of conditional monetary grants and loans.

During the life of OPA, local units, like private interests, were obliged to conform to its regulations. A municipality contemplating a power project involving the navigable waters or public lands of the United States must obtain a license from the Federal Power Commission and subsequently adhere to the uniform system of accounts which that body has prescribed. In connection with the Commission's survey of electric rates, city-owned as well as privately-owned electric power plants were required by Congress to make reports or answers under oath, to file statements within a prescribed time, and to submit to investigation for the purposes of the Commission's fact-finding assignment.

The Federal Communications Commission possesses authority to control the operation of radio transmitting apparatus by cities and other local units, and the Civil Aeronautics Board and Administration exercise certain controls over airports owned and managed by public as well as private agencies. Other pertinent illustrations are the jurisdiction of the Interstate Commerce Commission over the interstate railroads owned and operated by a few cities, e.g., Cincinnati, and the authority of the Department of National Defense to grant or deny permission to municipalities which desire to erect bridges across navigable streams or to construct wharves, piers, or other public works upon navigable waters.

As the foregoing illustrations show, regulatory relations of the type here under consideration arise because cities engage in activities which, whether maintained by public or private agencies, are subject to federal control. Cities are not singled out for regulation. Federal jurisdiction extends over the field of activity rather than over the city as an instrumentality of government.

**Miscellaneous Relations.** Federal policies and activities affect local units in many ways without involving the establishment of definite relations of any particular type. Actions taken by the Federal Government create or help to create various conditions and situations with which local governments are confronted. The effects on cities may be favorable or unfavorable.

One of the consequences of the National Industrial Recovery Act was the development of market conditions which proved costly to cities. This unfavorable effect was attributable in large part to increasing code prices and to price-fixing practices and collusive bidding which rendered meaningless the common charter requirement that cities let contracts for equipment, supplies, and materials to the lowest responsible bidder. Normal competitors frequently submitted bids which were identical in character. Local purchasing costs rose but eventually federal authorities took steps to remedy the situation.

Another federal measure which burdened city treasuries was the Revenue Act of 1932. A manufacturer's excise tax was imposed on a number of commodities which cities ordinarily purchased, e.g., automobiles and trucks, gasoline, radios, sporting goods, and matches. Under this act and rulings of the Bureau of Internal Revenue, these items were exempted from the tax only if purchased from manufacturers or wholesalers for use by cities in connection with "essential governmental services." Many municipal activities fell outside this category. Later revenue acts brought about substantial relief by exempting cities from payment of the tax with respect to all purchases, whether from wholesalers or retailers, which were made for the exclusive use of cities.

Fortunately, many policies of the national government have favorable rather than unfavorable effects as far as cities are concerned. Federal assumption of a large share of relief costs during the critical years of the depression proved a major benefit to numerous cities, especially those which were faced

with insolvency. Cities benefited in another way from the federal policy of loans to home owners under the Home Owners Loan Act of 1933. The HOLC was authorized to lend money for the payment of back taxes and as a result the heavy tax delinquency burden of cities and other local governments was materially lightened. To cite one more example, cities also are limited beneficiaries from the protective policy of the Federal Deposit Insurance Corporation in regard to bank deposits.

Another illustration of miscellaneous types of relation, among others which might be presented, is the effect of federal acquisition of real property located within the jurisdiction of municipalities. In many urban communities the real estate holdings of the Federal Government are fairly extensive. Consequently, by reason of the rule of constitutional law that federal property enjoys immunity from taxation, city governments are faced with an appreciable reduction of their taxable resources. The Federal Government usually is unwilling to waive its immunity. However, it often pursues the policy of making payments in lieu of taxes to city authorities.

#### FEDERAL-CITY RELATIONS IN THE FUTURE

In view of the haphazard way in which federal-city relations have developed, it is not surprising that there is substantial need for improvement in organization, procedure, and method. The important report on urban government which was prepared by the Urbanism Committee of the now defunct National Resources Planning Board includes an extended consideration of federal relations with cities. A variety of recommendations are made for the betterment of these relations. Among the Committee's suggestions are the following:<sup>8</sup>

- (1) The establishment of a permanent coordination and planning committee for intergovernmental relations to act as a service agency for the federal departments and bureaus maintaining relations with cities and other local units.

- (2) The creation of an intergovernmental council, including representatives of all levels of government, for the cooperative consideration of policies and plans concerning problems of mutual interest.

- (3) Direct federal relations with large metropolitan cities under adequate state enabling laws and, if necessary, interstate compacts.

- (4) Contacts with smaller cities and other units of local government through the agency of state governments.

- (5) Deputization of local officials as federal officers, and vice versa, with power to apply national, state, and local laws and regulations pertaining to the same subject matter.

- (6) The drafting of model laws, ordinances, and rules as a major method for securing the collaborative codification of regulations in fields in which two or more levels of government are active.

- (7) The establishment of independent review boards to hear disputes

<sup>8</sup> *Op cit.*, pp. 159-160.

concerning questions of personnel, procedure, and service, to interpret the application of standards and contracts, and to pass on the grievances of any level of government.

(8) The equitable allocation of costs among all levels of government on the basis of satisfactory standards.

(9) The establishment of a permanent credit policy in association with a long-range public works policy.

(10) The systematization and improvement of fiscal procedures in connection with the granting of federal aid, extension of such procedures to other fields by advisory assistance and other non-coercive techniques, and better coordination of federal supervisory devices with the procedures and supervisory systems of the states.

(11) The promotion of competence in personnel and the improvement of personnel techniques by establishing standards as a condition of financial assistance, by rendering technical assistance, and by extending in-service training facilities.

(12) The development of a comprehensive and effective reporting program, to be coordinated by a suitable federal agency, in order to add greatly to the quantity and quality of information concerning urban governments.

(13) The collaborative preparation of standards by the several public units undertaking common programs or functions.

(14) The giving of due consideration to federal-city relations in connection with federal administrative reorganization and the establishment of offices of state and local relations in appropriate departments and bureaus.

The general purpose of the Committee's recommendations is to bring about improvements in organization, procedure, standards, and personnel and to provide more adequate information pertaining to municipal affairs. Proper emphasis is placed on the participation of local units and states in the formulation of plans and policies. Arrangements of the suggested type probably would pay dividends in the form of good will, sincere cooperation, and more effective federal-city relations.

The primary rôle of the Federal Government in a cooperative program involving the states and cities should be to provide information, expert consultant service, financial assistance, and leadership in achieving coordination of the efforts of officials at all governmental levels to solve problems of common concern. Among the major objectives should be the education of local officials and the improvement of local governmental processes.

There is urgent need, too, for a federal-state-local approach to the solution of the revenue problem which is becoming increasingly serious for municipalities. Financial assistance for local units in one form or another is justifiable and even necessary under certain circumstances, but it carries with it the risk that serious inroads may be made on local autonomy through excessive use of the device of conditional grants-in-aid. Once a municipality becomes the regular recipient of federal financial assistance it is very likely to experience considerable difficulty in terminating the relationship without curtailing services or suffering financial hardship. Allocation of adequate

sources of revenue to municipalities would place them in a more favorable position to get along without federal grants and the restrictive conditions which normally are attached thereto.

The prospects for the future are that federal-city relations will multiply rather than decline in number and variety. In all probability, their general character will remain basically the same as at present. It seems unlikely that the extensive controls exercisable by the states over cities will be transferred to Washington. However, many opponents of the trend toward centralization prophesy that such will be the eventual outcome of recent developments. On the whole, their fears seem to be unwarranted. "The Federal-city relationships which have come into being since 1932 should help point the way not to Federal control over cities, but to a new plane of Federal-city cooperation in the complicated business of governing."<sup>9</sup>

This appraisal of the situation appears to be as sound today as it was when made more than a decade ago by investigators of the developing relations between the national government and cities.

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## CHAPTER X

### THE GOVERNMENTAL PROBLEMS OF METROPOLITAN AREAS

- The Nature of a Metropolitan Area
- Origin and Growth of Metropolitan Areas
- Political Decentralization
- The Need for Effective Metropolitan Government
- Solutions for Governmental Problems of Metropolitan Areas
  - Annexation and Consolidation
  - Intergovernmental Cooperation
  - Extra-Territorial Powers
  - Ad Hoc* Authorities
- The Administrative District and Federal Plans
  - (1) Administrative District Plan
  - (2) Federal Plan
- City-County Consolidation and Separation
- Appraisal of Proposed Solutions
- Reasons for Slow Progress in Solving the Governmental Problems of Metropolitan Areas

#### THE NATURE OF A METROPOLITAN AREA

A METROPOLITAN area is a densely populated region, predominantly urban in character, which has developed a substantial degree of unity in its social and economic life. Ordinarily, by far the greater part of its population is assembled in an aggregate of distinctly urban communities which are related so closely to one another, geographically as well as economically and socially, that they constitute a complex super-community with a number of distinguishable centers of population. This super-community also includes the rural or semi-rural areas which are adjacent to, and socially and economically dependent on, its component urban centers. Generally, but not necessarily, the urban portion of a metropolitan area consists of one relatively large and dominant city associated with neighboring cities of smaller size which are appropriately described as suburbs and satellites. New York, Chicago, Philadelphia, Los Angeles and Detroit, to cite but a few examples, dominate the areas of which they are an integral part.

The existence of these metropolitan areas constitutes a serious political problem because extreme governmental decentralization prevails in spite of a more or less unified economic and social structure. Each of the numerous governmental units contained within every metropolitan district undertakes to provide necessary services for that portion of the district which falls within its legal boundaries. There is no government for the entire area

with adequate authority to solve *all* of the problems of metropolitan concern which may arise. This political decentralization both preceded and accompanied the development of the metropolitan region as a social and economic fact. It continues to exist for a variety of reasons which will be discussed below.

Precise determination of the continuously-shifting boundaries of metropolitan areas is particularly difficult because the influence wielded by the dominant city or cities and the degree of social and economic interdependence between the central and outlying section decreases gradually and imperceptibly, rather than abruptly and obviously, as the distance from the center of population increases. In so far as it may be necessary, for one purpose or another, to decide on precise limits, a somewhat arbitrary boundary line must be drawn.<sup>1</sup>

Among the more important factors which may prove decisive in settling the question of whether to include a given territory within a metropolitan area are its location and its distance from the center or centers of activity, its density of population, and the "swing of population," i.e., the character and the volume of daily travel to and from the central city or cities and other sections of the metropolitan area. This swing of population is indicative of the degree to which the territory's economic and social life functions through these cities. Other evidence is afforded by the extent to which its inhabitants are the beneficiaries of regular and substantial services rendered by agencies, public or private, centered in the dominant city or cities. Examples are such services as retail store deliveries, the distribution of newspapers, and the furnishing of power and light, water, gas, and telephone facilities. Local circumstances determine the weight to be attached to the foregoing and other indicators of the degree of integration which warrants the conclusion that a given section constitutes part of a metropolitan district.

#### ORIGIN AND GROWTH OF METROPOLITAN AREAS

The origin and growth of metropolitan areas is essentially a story of the increase and distribution of population as affected by technological developments in the production and distribution of wealth and in the modes of communication and transportation. Cities of the United States have grown rapidly during the last century, and at the same time drastic changes in the ways of living have occurred.

Generally speaking, the initial stage in the growth of a city is marked by

<sup>1</sup>For use in the 1940 census, the Bureau of the Census set up a metropolitan district in connection with each city of 50,000 or more, two or more such cities sometimes being in one district. The general plan was to include in the district, in addition to the central city or cities, all *adjacent and contiguous* minor civil divisions or incorporated places having a population of 150 or more per square mile. In some metropolitan districts, a few less densely populated contiguous divisions were included on the basis of special qualifications. Occasionally only a portion of a minor civil division was included if the minor civil division had a large area and the principal concentration of population was in a small section in or near the central city, with the more remote sections being sparsely settled. A metropolitan district is thus not a political unit but rather an area including all of the thickly settled territory in and around a city or group of cities. It tends to be a more or less integrated area with common economic, social, and, often, administrative interests. *Sixteenth Census of the United States; 1940, Population*, Vol. I. Number of Inhabitants, United States Summary, p. 11.

a congestion of population at the center. This overcrowding is followed by movement toward the outlying sections to escape the effects of congestion and to obtain more favorable living conditions. In time, the outer sections, in which later migrants to the city also settle, grow more rapidly than the center, which eventually may suffer a loss of population. The extent of the area involved in this shifting of population depends partly on topographical features, but chiefly on the means of transportation and communication available during the period of most rapid growth.

Suburban cities and villages spring up in the shadow of the central city, and these, together with older urban communities in the vicinity, undergo a similar process of development. As a result the several cities and villages which once were separated by stretches of open country tend to merge physically into a vast urban area, without, however, completely losing their individual identities. This physical merger is accompanied by a marked and increasing degree of social and economic unification. Although the need therefor becomes more and more apparent as the years go by, a corresponding political unification seldom occurs.

A variety of causes accounts for the developmental process just described. Many of them may be classified as economic in character, and most of them are specific manifestations of the general desire on the part of individuals to enjoy the benefits of suburban location without foregoing the attractions and without experiencing the disadvantages of life in a large and congested urban center. Numerous homeowners, tenants, businessmen, and industrialists who locate in the territory surrounding a large city seek a reduction in real estate costs, lower assessments and lower tax rates, and freedom from building regulations and other restrictions. Many persons are attracted by the more favorable residential conditions and the better opportunities for outdoor life in the uncongested and comparatively quiet and clean outlying sections. Industries may find cheaper labor as well as lower-priced land in the outskirts, with greater opportunity for expansion and with simplified means of obtaining raw materials and shipping finished products.

After the settlement of the outer areas has progressed to some extent, business opportunities attract retail merchants, tradesmen, craftsmen, professional practitioners, and others who serve the population in one way or another. Once begun, the process of settlement proceeds apace within a steadily expanding area.

#### POLITICAL DECENTRALIZATION

The need for essential governmental services develops simultaneously with the growth of new communities. Arrangements must be made for police and fire protection, the conservation of health, the collection and disposal of wastes, the furnishing of an adequate water supply, and many other services which contribute to a well-ordered and fruitful community life. As indicated above, the prevailing policy has been to localize the rendition of these services by incorporating new cities, villages, and towns, and by permitting the boun-

daries and powers of the older units of government to remain substantially the same as before expansion occurred. Each community is organized for governmental purposes as if it led a separate existence and were in no way related to the larger metropolitan area of which it is an integral part.

In addition to city, village, and town governments, a metropolitan area usually includes one or more counties, school districts, townships, and sundry special districts, such as drainage districts or park districts. The boundaries of these units of government always overlap and sometimes coincide, with the result that the inhabitants of a given area are subject to the jurisdiction of two or more local governments. Such an arrangement is particularly objectionable if it involves duplication of functions, as often is the case, if it gives rise to jurisdictional disputes, or if it results in a situation under which two or more governments are maintained to render services which might better be provided by a single government. The existence of several layers of government in metropolitan areas creates confusion, overburdens the voting population, and adds unnecessarily to governmental costs, without contributing to the effective and efficient performance of public functions.

According to data published by the Bureau of the Census, the number of separately incorporated municipalities (cities, villages, boroughs) in each of the ten metropolitan districts containing a population of more than 1,000,000 inhabitants is as follows: New York, 286; Chicago, 115; Philadelphia, 93; Los Angeles, 56; Boston, 19; Detroit, 45; Pittsburgh, 137; St. Louis, 70; San Francisco-Oakland, 41; Cleveland, 5; and Baltimore, 5. The average number for the 140 metropolitan districts in the United States is slightly over 12; the median, 5; the maximum, 286; and the minimum, 1.

There is no definite relation between the number of incorporated municipalities and the size of a metropolitan area in population or land area. For example, the district which includes Atlantic City, N. J., and ten other incorporated places contains more municipalities than 74 areas of larger size both in territorial scope and population; and the Scranton-Wilkes-Barre area which ranks 19th in population occupies 10th place in rating from the standpoint of number of municipalities.<sup>2</sup>

More impressive totals are obtained by counting counties, townships, school districts, park districts, drainage districts and the like, as well as the incorporated cities, villages, and boroughs. On this basis, for instance, 1039 governmental units are reported for the New York area and 821 for the Chicago metropolitan district. Nearly one-half of the districts contain two or more counties, and one-fifth are included within the boundaries of either two or three states.

The two major defects in the governmental organization of metropolitan areas are: (1) the existence of too many layers of government, and (2) the absence of effective arrangements for dealing with all matters of metropolitan concern and the consequent sectional treatment of these matters by separate, independently-operating city, village, or town governments. The latter defect probably is the more serious of the two.

<sup>2</sup>The above figures are taken from Bureau of the Census, *Governmental Units in the United States* (Washington Government Printing Office, 1944), pp. 64-67, Table 11.

## THE NEED FOR EFFECTIVE METROPOLITAN GOVERNMENT

Experience has demonstrated that the conditions of life in a metropolitan district give rise to numerous problems which can be solved properly only by taking into account the needs and interests of the entire area. Considerations of efficiency, economy, and convenience necessitate comprehensive and coordinated plans of action instead of the diverse and unrelated policies which usually result from the narrowly local approach of a multiplicity of governments with limited territorial jurisdiction.

Among the matters of metropolitan significance are the planning of general growth and development, transportation facilities, a system of arterial highways, traffic regulation, water supply, sewerage, light and power service, police and fire protection, public health, educational and recreational facilities, and the financing of governmental operations. A brief consideration of each of these subjects will indicate the nature of the problems involved and the benefits to be derived from the establishment of metropolitan programs of action. The details of such programs must necessarily be worked out in consideration of the peculiarities of each metropolitan area.

During the twentieth century, great emphasis has been placed upon the importance of city planning as a means of making cities better places in which to live. City plans are concerned with transportation facilities, street systems, land use, the location of public and semi-public buildings, park and recreational facilities, utilities, and similar matters.

Since growing cities expand territorially, effective planning necessitates control over the development of outlying areas, but the authority of most planning agencies is confined to the legal limits of the city and to a relatively small strip of territory beyond. The inevitable result is the haphazard and unregulated settlement of those surrounding sections which are destined to become integral parts of the expanding social city.

This situation is most acute in metropolitan areas. If each governmental unit within such an area does its own planning on a necessarily limited scale and there be no authority to devise and execute a master plan for the entire region, the very purpose of planning is defeated and the costly errors of unplanned growth in particular cities are duplicated on a much larger scale.

Fully aware of the need for metropolitan planning, various planning agencies have prepared regional plans for certain districts, but paper plans which remain unexecuted because of lack of cooperation on the part of numerous independent governments are of little practical value. Moreover, even if cooperative action were forthcoming, the outlays required often would prove too great for the limited financial resources of the poorer communities. To insure comprehensive planning and to overcome the ill effects of an unequal distribution of wealth, action by some metropolitan governmental agency is essential.

The constant flow of persons and goods into and out of a metropolitan area and from one section to another necessitates a variety of transportation facilities. Provision must be made for effective means of mass transporta-

tion, such as subways, surface cars, bus lines and railroads, for the free and easy movement of automobiles and trucks, and for adequate terminal facilities to accommodate passengers and freight transported by land, water or air.

Unless the several modes of transportation are properly coordinated and capable of meeting peak demands, tremendous losses in time, effort, and money are suffered, congestion becomes acute, and the potential advantages of life in a metropolitan community are only partly realized. Although transportation has its strictly local aspects, the problem as a whole is too complex and extensive to be solved through the individual and unrelated efforts of numerous governmental agencies operating within restricted areas and handicapped by limited financial resources.

An adequate supply of pure water must be furnished to the inhabitants of urban communities for domestic, manufacturing, and public purposes. In densely populated areas, costly waterworks often must be constructed to bring water from distant sources, store it, purify it, and distribute it to consumers.

If each of the separately incorporated cities and villages in a metropolitan area provides its own system, water costs become unnecessarily high because of unneeded plant duplications and the higher operating expenses per gallon of water in connection with small scale service. It usually is more economical to have a single system serving an entire area, or to have several fairly extensive systems to supply the wants of appropriate territorial divisions. Whatever the proper arrangements, the problem ought to be approached with the objective of meeting the needs of the metropolitan area in the most effective and inexpensive manner.

Sewerage systems are indispensable for the collection and disposal of house and storm sewage, and to avoid pollution it is becoming increasingly necessary to subject house sewage to treatment before ultimate discharge into some body of water. The design and construction of a sewerage system, the type of sewage treatment plants to be provided, and the selection of proper points of discharge into available bodies of water are problems which skilful engineers should be free to solve without taking into consideration the artificial territorial limits of the numerous governmental units within a metropolitan area. Topographical features may make a single system inadvisable, if not impossible, but it is unlikely that plans based solely on sound engineering principles can be developed unless political boundaries are disregarded. Again there is urgent need for a metropolitan approach to a problem of major importance.

With respect to gas, light, power, and telephone service, it should be noted that these services are commonly provided by private enterprise, subject to the regulation of rates, service standards, and extensions of service by a state utilities commission. Local governments continue to grant franchises and to enter into contracts. They also are relied on to represent local communities in hearings held by state commissions. In metropolitan areas, much would be gained if there were a metropolitan authority capable of attending to matters of this kind.

If public ownership and operation be substituted for private enterprise in these fields, there will be an even greater need for a public agency with metropolitan-wide authority. Large-scale economies would be unattainable if each governmental unit were to construct its own power plant or other utility to meet the demands of consumers within its limits.

As for park and recreational facilities, action on a metropolitan scale is advantageous in the establishment of large parks in the outlying sections and in the connection of these parks by a system of boulevards and parkways. The cost involved in the reservation and development of large tracts of land for park purposes ordinarily is too great to be borne by small communities. Furthermore, the uncoordinated efforts of numerous governments with limited spatial jurisdiction are not likely to produce the best results.

With respect to neighborhood parks, athletic fields, and playgrounds, the need for metropolitan action is not so great, but it may be necessary to draw on the financial resources of the entire area in order to provide the poorer communities with a sufficient number of these facilities which play so important a part in crime prevention, community health, social welfare, and educational programs. It often happens that the very communities which have the greatest need for such facilities are least able to afford them.

Most of the problems so far considered involve the construction of expensive public works, and consequently the financial factor becomes important in the development of an adequate program. Since taxable wealth is unevenly distributed throughout a metropolitan area, the proper solution of these problems is dependent on governmental arrangements which permit tapping of the full resources of the metropolitan community. However, the paramount reason for some type of metropolitan action is that the problems are of such a nature, partly because of physical factors, as in the case of sewerage, but chiefly because of the sociology of metropolitan life, that treatment on a metropolitan scale is essential for effective solution. The situations to be dealt with have ceased to be strictly local in scope and effect.

Financial considerations in particular warrant action on a metropolitan basis in the field of education. This important function requires the expenditure of large sums of money for plant, equipment, and personnel, assuming that a high educational standard is desirable, and unless the wealth of the entire area may be drawn upon, the poorer communities will be unable to establish satisfactory facilities. Moreover, certain economies may be realized as a consequence of large-scale operations, e.g., in the purchase of supplies and materials or in reduced overhead expenses. Then, too, a higher type of service is more likely to be rendered by an agency with a metropolitan point of view. The vision of local authorities is often as restricted as the territorial limits within which they operate.

Other activities which require a greater centralization of authority than now exists in the typical metropolitan district are police protection, fire prevention and fire fighting, health administration, and traffic regulation. The conditions which result from low standards of performance in at least two of these services, police and health protection, have such far-reaching



external effects that no community can justly claim complete freedom to do as it pleases.

One of the chief obstacles to a more effective enforcement of criminal law is the existence of numerous independent and uncoordinated police forces. The criminal is free from restrictions with respect to the territorial scope of his operations, but such is not the case with law enforcement agencies. City and village policemen and detectives ordinarily must operate within the legal boundaries of the political units employing them and rely on the efforts of similarly restricted agencies in other jurisdictions for the apprehension of wrongdoers who have departed from the scene of their crimes. If low standards in one or two of the communities included within a metropolitan area make them havens of refuge for criminals, there is no way in which the authorities of other communities can rectify the situation.

The establishment of adequate metropolitan police systems is urgently needed to overcome jurisdictional barriers and to achieve unified action in the law enforcement field. Extreme decentralization is an obstacle to better policing for other reasons. It retards, if it does not prevent, the development of better recruitment policies, the organization of improved police training schools, the most effective use of man-power, and the introduction of the most modern equipment and the most effective methods of fighting crime. Progress along these lines is promoted by large-scale operations and ample financial resources.

Germs, like criminals, fail to behave as they should in view of the decentralized political organization of metropolitan communities. Epidemics of contagious disease spread in spite of the legal boundary lines which hamper public health officials in the discharge of their duties. Misgovernment in one community becomes a menace to the entire metropolitan area. Many phases of public health protection could be handled more effectively and more economically by establishing uniform policies and unified administration. Such is the case, for example, in the matter of safeguarding a community's milk supply. If each governmental unit acts alone, standards vary, inspectional work is duplicated, costs are increased, the producers and distributors of milk are inconvenienced unnecessarily in many ways, and diseases attributable to infected milk in one section may become widespread. The dense and highly mobile population of metropolitan communities creates many similar health problems which are difficult to deal with on a sectional basis.

Fire prevention is an undertaking which calls for action on a metropolitan front in order to insure the maintenance of uniform minimum standards in connection with regulations designed to curtail physical, occupational, and personal hazards. Low standards in one section work a hardship upon others, especially since the spreading of fire in built-up areas is unaffected by political boundaries, and also because leniency in regulation is sometimes a factor in determining the location of business enterprises. The daily interchange of population so characteristic of metropolitan areas means a sharing of the risks even though there be no sharing of control. Then, too,

a well-rounded fire prevention program in general is more likely to be formulated and executed if responsibility for so doing is placed upon a competent and adequately financed metropolitan authority.

The effectiveness of fire fighting depends upon the quality of personnel, proper equipment, appropriate technique, the location of fire stations, a good fire alarm system, quick response, and similar factors. In a metropolitan area, the location of stations, the distribution of men and equipment, and the running schedules of companies are matters that can be worked out more satisfactorily if the legal boundaries of political units may be ignored. Action on a metropolitan scale is also beneficial in the recruitment and training of men and the purchase of equipment.

The continuous, rapid, and safe movement of traffic depends partly upon the provision of adequate physical facilities, such as express highways or good street pavements, and partly upon effective traffic regulation. In a metropolitan area, uniform regulations with respect to right and left hand turns, the location of traffic lights, and related matters are particularly advantageous. There are other traffic problems, for example, the classification and routing of traffic along different thoroughfares, which ought to be handled in consideration of traffic conditions throughout the entire district. Moreover, the size, distribution, and training of traffic-regulating personnel are matters which merit the attention of metropolitan agencies.

Enough evidence has been presented to demonstrate the need for governmental action on a metropolitan scale in order to deal properly with situations created by the operation of economic and other social forces within metropolitan areas. The number of activities affected and the appropriate degree of political centralization should be determined in accordance with the conditions which prevail in particular areas, and not by the rigid application of abstract formulae. Sometimes the decisive factor is financial. It often is either the need for uniform regulations to eliminate confusion and inconvenience or the impossibility of solving problems without comprehensive and coordinated programs of action. Sometimes it is the necessity for maintaining satisfactory minimum standards of service in order to safeguard the entire community against sectional misgovernment.

From the standpoint of effective, efficient, and economical government, metropolitan action in some form is warranted whenever its demonstrable benefits outweigh its tangible disadvantages. Conflicts of opinion regarding the relative importance of merits and defects are inevitable, but it is regrettable that more often than not the issues are obscured by pride, prejudice, ignorance, and cupidity.

#### SOLUTIONS FOR THE GOVERNMENTAL PROBLEMS OF METROPOLITAN AREAS

So far, little headway has been made toward a complete solution of the governmental problems of metropolitan areas in the United States. Comprehensive plans have failed to progress beyond the proposal stage. However, the fact that they have been formulated and, in some instances, submitted to

the voters for approval, even though unsuccessfully, is at least encouraging. The only measures which have been put into effect may be classified as partial solutions of a makeshift or stop-gap variety.

**Annexation and Consolidation.** At first thought, the simplest means of overcoming political disunity would seem to be an extension of the legal boundaries of the central city to include all of the territory which comprises the metropolitan area. If that were done, the city's government would be transformed into a metropolitan government which could be granted such additional powers as might prove necessary. Such an extension would involve not only the annexation of unincorporated territory, but also the merger or consolidation of independently organized communities.

Unfortunately, annexation and consolidation have proved to be impractical methods of attaining the desired end, partly because of the difficulty of obtaining favorable action on proposed mergers or annexations and partly because of vigorous objection to the resultant political arrangements.

The history of annexations and consolidations is largely one of delays and piece-meal extensions. Generally speaking, movements for territorial expansion lag behind actual social and economic developments and never catch up. Among the reasons for this lag are lack of foresight, cumbersome legal procedures, the extremely rapid and widespread shifting of population, and the tenacious opposition which frequently develops in some of the areas affected.

Large-scale annexations and consolidations sometimes have occurred. Notable examples are the creation of Greater New York in 1897 (320 sq. miles), the Philadelphia consolidation of 1854 involving 15 boroughs and 13 townships, the extension of the boundaries of New Orleans in 1874 (180 sq. miles), the Chicago expansion of 1889 (125 sq. miles), and the Los Angeles (170 sq. miles) and Baltimore (61 sq. miles) expansions of 1915 and 1918 respectively.

As a rule, however, annexed territories are comparatively small in size.<sup>8</sup> Some cities have made no annexations for relatively long periods of time in spite of a growing need therefor, and even those which have added large areas have been unable to match the rate at which population shifts have occurred.

The greatest resistance to annexation or merger is usually encountered in the wealthier suburbs which have been separately incorporated, whereas the poorer incorporated communities and unincorporated areas which have been without the services that city governments normally render are more likely to favor inclusion within the limits of the central city. In the absence of constitutional restrictions, state legislatures possess the necessary authority to compel territorial and political consolidations, but the pressure exerted by politicians of various types and by other groups interested in maintaining the *status quo* is so great, and the sentiment for local decision in this matter

<sup>8</sup> In 1947, 298 cities with a population of 5,000 or over reported land area annexations. Of these, only 60 annexed one-half a square mile or more. See *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), p. 46.

is so strong, that remedial legislative action is extremely unlikely. The forcible annexation of Allegheny to Pittsburgh in 1908 over the opposition of the voters of Allegheny proved decidedly unpopular.

Apart from the difficulty of effecting annexations or consolidations, a number of vexatious questions arise because of the uneven distribution of population and wealth in metropolitan areas. If only the built-up sections were added to the central city, its government would be unable to control the future development of outlying areas of a quasi-rural character which are destined to become heavily populated. However, if the central city were to annex both built-up and undeveloped territory, the demand for the usual city services invariably would arise in the latter and the city government might become involved in financial difficulties in attempting to satisfy that demand. Some cities have learned by bitter experience that it is an expensive proposition to furnish many of the normal municipal services in sparsely populated sections.

The union of undeveloped areas into a single unit of government as a means of avoiding this problem seldom is feasible for two major reasons. In the first place, the growth of urban areas does not always follow a territorial pattern which permits the formation of compact governmental units out of either undeveloped or built-up areas. This situation may be due to topographical features, available transportation facilities or other factors, but whatever the cause, areas which in theory might be combined because of their character are so scattered geographically that combination is out of the question.

Secondly, the undeveloped areas which remain after the built-up sections are annexed to the central city may be so handicapped financially because of limited taxable wealth as to be unable to perform such governmental functions as are necessitated by reason of their proximity to the urban center. This difficulty does not arise, however, if, in spite of annexation to the central city, the built-up sections remain within the taxing jurisdiction of the governmental agencies exercising control over the unannexed areas. For instance, the extension of city boundaries does not affect the financial resources of county governments unless cities are excluded from the jurisdiction of county authorities.

Even if annexation and consolidation proceeded as rapidly as the growth of metropolitan areas, the advisability of the resultant political set-up would be open to question. The ultimate purpose of annexations and consolidations is to provide a single government throughout the metropolitan district by extending the authority of the central or dominant city and by abolishing such governments as may have existed in the annexed sections.

Since metropolitan areas are usually composed of a collection of heterogeneous communities, doubt is expressed concerning the desirability of relying upon a single metropolitan government for the furnishing of all services. Common action is favored only for matters of metropolitan concern, and not for those of a peculiarly local character which could be dealt with effectively by the separate action of the component communities.

It is argued that there is a limit to successful bigness; that a single government for a metropolitan area would be overburdened by the multitude of duties thrust upon it; and that such a government would prove too remote and impersonal to respond as it should to the needs of local communities. Attention would be concentrated upon problems of metropolitan significance and local matters would receive inadequate consideration. Extreme centralization would prove as undesirable as the extreme decentralization which now prevails.

Whether or not such fears are well founded, their existence accounts for the contention that a division of powers between a metropolitan agency and existing political units is preferable to a concentration of power in a single metropolitan authority. Some plan which will preserve the political identity of local communities is more likely to receive the support of opponents of centralization. Local pride and local attachment to existing political institutions are social forces that cannot easily be overcome.

**Intergovernmental cooperation.** One means of alleviating the governmental troubles of metropolitan areas without disturbing existing arrangements is through cooperative enterprises which are participated in by two or more of the political units within a metropolitan area. Enabling acts have been passed by many states and the number of cooperative undertakings is steadily increasing. However, it often is easier to talk about cooperation than to achieve it. Intergovernmental cooperation assumes several forms and extends to a variety of activities.

One form of cooperation is the *joint enterprise* which is characterized by a combination of two or more units of government for the special purpose of dealing with some problem of common concern. Provision frequently is made for some agency through which common action can be taken, viz., a board, a committee, or a less formal conference or meeting in which each of the cooperating municipalities is represented.

In many instances the arrangements for joint management and financing of the enterprise are based on formal agreements of a contractual character. Sometimes informal understandings are sufficient for the attainment of the desired end. Examples of this type of cooperative action are the operation of a water supply system by the Passaic Water Supply Commission which is composed of representatives appointed by the cities of Paterson, Passaic, and Clifton, N. J.; the management of a sewage treatment plant by a joint meeting of the councils of Plainfield, North Plainfield, and Dunellen, N. J., and by an operating committee composed of a representative of each municipality appointed by the joint meeting; and the joint operation of a sewerage system and treatment plant by Atlanta, Ga., and the counties of Fulton and DeKalb. Other illustrations among the many which might be presented are the building and management of a police radio transmitter by Omaha and Douglas City, Nebraska; the joint management of a city hospital, county home, and city-county department of outdoor relief by St. Paul and

Ramsey County, Minnesota; and the construction and operation of a city-county building by Pittsburgh and Allegheny County, Pennsylvania.

Another type of cooperation consists of the *rendition of service by one unit of government for others*, usually upon a contractual basis. Many cities, including New York, Chicago, Baltimore, Cincinnati, Minneapolis, and Portland, Oregon, sell water to suburban communities. Usually the suburbs provide their own distributing systems, water being delivered in wholesale quantities through master meters, but occasionally the central city, e.g., Baltimore, owns and operates the distributing systems in the communities which are served. In the field of sewerage, connection of the sewers of neighboring municipalities to the system of the central city in a metropolitan area is a fairly common practice. Another interesting example is the action taken by about 40 municipalities in Los Angeles County in discontinuing local health administration in favor of centralized service by the county health department. A number of cities, including Chicago, Los Angeles, Cincinnati, Cleveland, Pittsburgh, Spokane, Topeka, Louisville, and El Paso, provide police radio service throughout the counties in which they are located. Recently, the Pennsylvania legislature authorized Allegheny County to build incinerators and other disposal facilities for the numerous municipalities within the county.

A third type of cooperation, which is based on the principle of mutual aid, involves *exchange of services* by the participating units of government. In 1936 the fire chiefs of ten communities in Milwaukee County agreed upon a plan of reciprocal aid in fighting fires. Eleven years earlier the Egyptian Fire Fighters' Association was organized by 60 southern Illinois communities within an area of 12,000 square miles. Mutual aid in fire protection also is practiced in various other sections, e.g., the Boston area and Westchester County, N. Y. In the police field, twelve California cities have developed a mutual aid plan which involves placement of their forces under one coordinator. Another example of exchange of services is afforded by the contractual agreement between Cleveland and Lakewood, Ohio, in accordance with which Cleveland disposes of the sewage in the eastern section of Lakewood and the latter takes care of the sewage in the southwestern part of Cleveland.

Cooperative action of one type or another occurs in an impressive range of municipal functions.<sup>4</sup> However, the actual number of arrangements is small in proportion to the opportunities which are afforded, and it is unlikely

<sup>4</sup>The list of functions includes the purchase of supplies and materials; personnel administration; assessment of property for taxation; fire protection; police protection; police and radio systems; public health administration; hospitals; houses of correction and reformatories; public buildings; education; library service; public works, especially water supply, sewerage, sewage treatment, bridges, and roads; recreation; ferry systems; street railway service; parks; city planning, and garbage disposal. See current editions of *The Municipal Year Book*; E. F. Jarz, "Intermunicipal Cooperation in Water Supply", *Public Management*, Vol. XXV, No. 1, January, 1943, pp. 7-12; "Intermunicipal Cooperation in Sewage Disposal", *ibid.*, Vol. XXVI, No. 9, September, 1942, pp. 267-272; "Intermunicipal Cooperation in Police Protection", *ibid.*, Vol. XXIV, No. 3, March, 1942, pp. 68-72; "Intermunicipal Cooperation in Fire-Fighting", *ibid.*, Vol. XXIV, No. 2, February, 1942, pp. 48-51; J. P. Pope "Intercity Cooperation Increases", *National Municipal Review*, Vol. XXXIII, No. 6, June, 1944, pp. 287-291; J. Jamison, "Neighboring Areas Join Hands", *ibid.*, Vol. XXV, No. 3, March, 1946, pp. 111-146.

that the governmental problems of metropolitan areas will be solved adequately in this way. The desire to cooperate is not sufficiently strong, the difficulties in reaching an agreement are often great, and the problems of metropolitan areas are too numerous and complex to be solved effectively solely on a cooperative basis.

Nevertheless, cooperation is valuable as a means of offsetting some of the disadvantages of decentralization, and it may prove particularly effective in overcoming the psychological barriers to the establishment of a really adequate metropolitan government. A leading authority in the field of metropolitan problems has referred to functional consolidation or integration as "the road of easiest grade into the intricate and complicated field of metropolitanism."<sup>5</sup> Although cooperative action dates back to the nineteenth century, the greatest progress has been made during the last 25 years. Cooperation on a sufficiently large scale and with respect to all of the problems of a metropolitan area is improbable.

**Extra-Territorial Powers.** Another device which has been resorted to in order to enable cities to exercise some measure of control over unannexed, outlying areas is the delegation of extra-territorial powers. The powers referred to are such as involve compulsory regulation of persons and property outside the political boundaries of the city. Examples are authority to control the platting of land, to prescribe zoning regulations, to prohibit abattoirs, hog farms, and other nuisances within certain districts, or to establish quarantine and other health regulations. Powers of the foregoing type differ from authority to carry on extra-territorial activity in order to render some service to the inhabitants of the city or to the residents of outlying sections on a voluntary basis.

Extra-territorial action of this latter variety includes the right to construct works for the collection of water, to establish hospitals, quarries and parks, and to render services of the type described in previous paragraphs to neighboring communities on a cooperative basis. To draw a definite line of demarcation between these two categories of extra-territorial activity is difficult because compulsory control may be involved in some degree in both cases. For instance, a city may be authorized to acquire land for a park by condemnation, or to enact regulations designed to safeguard an external source of water supply from pollution. In these instances, however, compulsory control is merely incidental to the realization of an objective which does not include determination of the conditions of life throughout an area lying outside the legal boundaries of the city.

The extra-territorial police power of cities ordinarily is confined to comparatively small belts and extends to a limited number of subjects. Consequently, it has proved of little significance in solving the governmental problems of metropolitan areas. Moreover, an extension of such authority is unlikely because of opposition to any arrangement which permits the

<sup>5</sup> T. H. Reed, "The Metropolitan Problem—1941", *National Municipal Review*, Vol. XXX, No. 7, July, 1941, p. 408.

exercise of compulsory control over persons who are unrepresented and possess no political privileges, such as voting and holding office, with respect to the controlling government. The denial of political privileges to the inhabitants of the areas within which extra-territorial powers are exercised is asserted to be incompatible with the principles of popular and local self-government which prevail in the United States.

Another difficulty arises in the matter of financing extra-territorial activities. The inhabitants of the controlling city contend that inasmuch as outsiders benefit from these activities, they should be compelled to give financial support. However, those who live in these outer areas argue that taxation without representation is unfair and unconstitutional. This attitude has been upheld by the courts in a number of cases. In most jurisdictions the central city pays the entire cost of its extra-territorial activities.

**Ad Hoc Authorities.** Another way of dealing with the governmental problems of metropolitan areas is to create *ad hoc* authorities which usually are charged with the responsibility of rendering a particular service throughout an entire metropolitan area or a portion thereof. These special authorities represent an attempt to meet the most urgent needs of metropolitan areas without disturbing existing political arrangements to any significant extent.

Each such authority constitutes an addition to an already large number of separate and distinct governmental agencies. Although no single pattern of organization has been followed, these special agencies usually are characterized by certain features which may be enumerated as follows: (1) definite boundaries embracing a substantial portion of a metropolitan area; (2) the possession of no greater power than is necessary for the attainment of a limited number of purposes—ordinarily a single purpose; (3) a governing authority which in contemplation of law is not an integral part of the governmental system of any other local unit of government, and (4) an independent financial status.

The differences among *ad hoc* authorities outnumber their similarities. Of most importance are those relating to the selection and removal of the governing personnel, the general character of their powers, the methods of financing their activities, and the nature of their relations to existing units of government.

Among the methods of selecting the governing personnel are: (1) appointment by some state authority, usually the governor or the governor with the approval of the upper house of the state legislature; (2) a popular election participated in by the qualified voters of the district; (3) appointment by the governing authorities of such local governmental units as are included within the district; (4) *ex officio* membership of designated state or local officials.<sup>6</sup>

<sup>6</sup> The five members of the Massachusetts Metropolitan District Commission and the five commissioners heading the Port of Boston Authority are appointed by the governor with the advice and consent of the executive council; six of the commissioners of the Port of New York Authority are appointed by the governor of New York and six by the



With respect to the general character of their powers, *ad hoc* authorities may be divided into three classes. (1) those with investigatory and advisory power only; (2) those whose authority is limited to the proposal and administration of policies which are subject to the final approval of some other governmental body; (3) those possessing both legislative and administrative powers.

An example of the first type is the new regional planning commission which was established recently in Cuyahoga County, Ohio. It may prepare plans and make recommendations which require adoption by the various municipalities which are located in the county. Typical of the second class is the Massachusetts Metropolitan District Commission which executes such projects as the Massachusetts legislature adopts with respect to water supply, sewerage, and parks in the Boston area. It is strictly an administrative agency. The third type of special authority is illustrated by the Sanitary District of Chicago, the Cleveland Metropolitan Park Commission, and the Washington Suburban Sanitary Commission. These authorities may formulate, adopt, and execute plans or projects pertaining to the purposes for which they were created without obtaining the approval of any other governmental agencies, state or local. They are, of course, bound by the laws creating them and defining their powers and duties.

The methods of financing the operations of *ad hoc* authorities are as varied as their organization and the general character of their powers and duties. Many of them possess independent powers of taxation and/or borrowing, whereas others obtain their funds in the form of contributions from other units of government. Sometimes these contributions are unconditionally binding upon the assessed municipalities, but more commonly contributions become obligatory only after a municipality has given its consent to the project which is to be financed. Other methods of financing include revenue from enterprises undertaken by the special authority, loans secured by such enterprises, and special assessments. In a few instances funds have been provided by the state government.

Contributory plans are based on the principle of assessment against municipalities in proportion to the benefits which are derived from the operations of the special authority. Various schemes have been adopted for the measurement of benefits. The apportionment of costs is likely to be based on such standards as assessed valuation of property, population, the number of representatives on the governing body, or the quantity of the commodity consumed or delivered, i.e., the amount of the service which is received, if

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governor of New Jersey—in each case with the advice and consent of the senate; the twenty-two members of the Metropolitan District of Hartford County are selected by the Connecticut governor. Popular election is the method of choosing the nine members of the board of trustees of the Sanitary District of Chicago, the three members of the Seattle Port Commission, and the five members of the board of directors of the East Bay Municipal Utility District (water supply for the east shore of San Francisco Bay). The Essex Border Utilities Board (Canada) includes the mayors or reeves of eight municipalities and eleven members chosen by popular vote (four by the voters of Windsor and one each by the voters of seven other municipalities). The Metropolitan Water District of Southern California is governed by a board of twenty directors appointed by the chief executives, subject to council approval, of Los Angeles and thirteen other municipalities (seven from Los Angeles and one each from twelve other cities and a municipal water district). The three members of the Cleveland Metropolitan Park Commission are appointed by the probate judge of Cuyahoga County.

exact measurement is possible. Frequently, combinations of these different standards are utilized.

From the standpoint of their relations to existing units of government, *ad hoc* authorities are of two general types: (1) those which are independent units of local or metropolitan government, and (2) those which are subject to more or less control by either the state government or the various municipalities within the district wherein the special authority operates. Whether a given *ad hoc* authority belongs in one category or the other depends on the constitution of its governing body and the character of its powers.

If the governing body be chosen by and accountable to the voters of the district, if it be free to exercise its powers according to its own discretion, and if it possess means of financing its activities without obtaining the approval of other governmental authorities, it is a truly independent unit of local government with a status similar to that of the typical municipality. Examples are the Chicago Sanitary District, the Seattle Port Commission, and the East Bay Municipal Utility District. The Cleveland Metropolitan Park Commission differs in that the commission members are appointed by the probate judge of the county and removable by him on presentation of complaints and after a proper hearing. However, the judge is in no position to control the commission in the exercise of its powers.

*Ad hoc* authorities falling in the second category are subjected in one way or another to the control of other governing bodies. Some of them, e.g., the Massachusetts Metropolitan District Commission, are clearly agencies of the central state government. Others, e.g., the Metropolitan Water District of Southern California, are agents of a group of municipalities. Still others, e.g., the Massachusetts Metropolitan Transit District, are controlled partly by state and partly by local authorities.

The basis of control varies. It may be the power to appoint, remove, direct, and supervise the governing authority of the special district, or it may be the fact that the governing body is composed of the representatives of municipalities. Sometimes control results from the provision that the *ad hoc* authorities must obtain the permission of state or local officials before undertaking any project, and in some instances it arises from the requirement that final decision in matters of policy and finance rests with other agencies.

The answer to the question of whether *ad hoc* authorities have proved successful depends on the point of view from which results are appraised. If the sole consideration be the effectiveness with which the limited responsibilities of these authorities have been discharged, it may be said that on the whole the record of accomplishment is favorable.

The Committee on Metropolitan Government of the National Municipal League reports that special agencies have been most successful in the execution of specific projects, but less successful in the determination of public policy, in continuous and constructive planning, in arousing public interest in metropolitan affairs, and in seeking additional responsibilities. This situation is attributed for the most part to a lack of interest and enthusiasm caused by limited functions, by restricted discretionary powers, and by the desire

to avoid the opposition of such interests as are opposed to the establishment of powerful agencies of metropolitan government.<sup>7</sup>

As a solution for the governmental problems of metropolitan areas the creation of *ad hoc* authorities is an undesirable practice. In the first place, only a few of the many problems of metropolitan concern have been entrusted to these special agencies. Secondly, if an *ad hoc* authority were established for the discharge of every function of metropolitan significance, an already cumbersome and complex governmental machinery would become even more complicated.

A comprehensive and coordinated program of action for solution of the numerous problems of metropolitan areas is not likely to be developed and executed by a large number of independent governmental agencies with narrowly restricted powers. Experience has indicated that diffusion of power and responsibility is an almost insurmountable obstacle to effective and efficient government. The prospects for cooperative action are slight. Centralization without integration is as unsatisfactory as the extreme decentralization which now exists in the metropolitan areas of the United States.

The chief value of the *ad hoc* authority is as a makeshift means of meeting the most urgent needs of metropolitan communities until such time as the demand for a more effective system of government becomes sufficiently strong to overcome opposing forces. Since the creation of special agencies does not necessitate the abolition of existing governmental units, opposition thereto is less intense than in the case of more drastic remedies. In fact, job-hungry politicians usually are willing to support a proposal which will increase rather than decrease the number of public offices and complicate rather than simplify the governmental structure.

The danger in resorting to *ad hoc* authorities lies in the fact that even if looked upon as temporary expedients at the time of creation, they tend to become permanent and are likely to join the forces in opposition to more effective instrumentalities of metropolitan action. Moreover, there is reason to believe that the existence of these authorities has been a factor in slowing down the processes of annexation and consolidation.

**The Administrative District and Federal Plans.** Two other plans for satisfying the governmental needs of metropolitan communities are designed to avoid the extremes of centralization and decentralization by distributing governmental powers between a metropolitan government and the governing bodies of appropriate political subdivisions. One of them will be referred to as the "administrative district" and the other as the "federal" plan.

(1) **Administrative District Plan.** Under this plan all legislative power is vested in a central metropolitan government, whereas administrative power is divided between this government and the governmental agencies of component territorial districts. The number and size of these districts may be

<sup>7</sup> Committee on Metropolitan Government, *The Government of Metropolitan Areas* (New York, The National Municipal League, 1930), Chapter XVI, particularly pp. 337-341.

determined without reference to the various political units which previously existed within the metropolitan area. On the other hand, the identity of the latter may be preserved. In that event, however, their status is changed by depriving them of legislative authority. They are transformed into autonomous administrative districts.

In either case, each administrative district is charged with the administration of some of the policies which the legislative organ of the metropolitan government formulates and adopts. Provision also may be made for representation of the several administrative districts on the governing bodies of the central metropolitan authority. In these ways, it is contended, the demand for local autonomy can be satisfied, at least partially, without the confusion, conflict, and complexity of an arrangement under which legislative power is divided among numerous independent and unrelated governing bodies.

The details of an *administrative district* system have to be worked out with reference to the conditions peculiar to a particular metropolitan area and with the requirements of efficient and effective administration in mind. Of primary importance is the determination of those activities which can be administered advantageously on a sectional basis and those which should be administered by departments of the central metropolitan government. Among the services which might be assigned to the administrative districts are: the construction and maintenance of certain public works, such as lateral sewers, street pavements, and sidewalks; the cleaning of streets; the collection of garbage, ashes, and rubbish; local traffic regulation; the management of playgrounds, and fire protection.

An outstanding example of the *administrative district* system is afforded by the governmental organization which was devised in 1920 for the Berlin (Germany) metropolitan area. The act of 1920 creating the new corporation of Greater Berlin abolished some 95 local authorities and divided the metropolis into 20 administrative districts of varied size. In addition to the central government of Greater Berlin, a governmental organization was provided for each of these districts.

The metropolitan authorities were authorized to administer such functions as might require uniform administration in the interest of the metropolitan community.<sup>8</sup> Provision was made for the assignment of administrative functions to the district governments, but the supremacy of the metropolitan government was definitely established by making it the sole possessor of legislative, taxing, and borrowing powers, by giving it control over both the central and district budgets, and by empowering it to allocate administrative functions to the districts. Certain other powers of the metropolitan government enabled it to promote unity in the administrative practices of the district governments. Among these powers were authority to issue general administrative regulations binding on the districts, the right to remove district officials, the right to hold joint sessions of the metropolitan Magistrat

<sup>8</sup> The more important functions administered by the central government of Berlin were the purchase of supplies; fire protection; the management of forest reserves, parks, and other landed property; and the operation of such utilities as gas, water, electric light and power. Responsibility for the administration of practically all other functions was placed on the district authorities.

and the district burgomasters, and the power to veto district decisions subject to an appeal to an arbitral committee.<sup>9</sup>

The government of New York City is the only example of the *administrative district* plan in operation in the United States. New York's "borough" plan was established by the charter of 1897 and the revision of 1901, modified during subsequent years, and retained, although with a curtailed decentralization, under the new charter which became effective in 1938. The consolidation of 1897 involved by far the greater part of what was at that time the metropolitan area, but today the boundaries of the city include only a little more than one-fourth of the territory comprising the metropolitan district as defined by the Bureau of the Census. Nevertheless, the New York "borough" plan merits consideration as a possible solution of the governmental problem of metropolitan areas.

The chief governmental authority in each of the five boroughs is a president who is elected by the borough voters for a four-year term. Practically all of the powers which a borough possesses are vested in this official. He is authorized to appoint a commissioner of public works, a secretary, a number of assistants and clerks, an advisory planning board of three members, and five of the seven members of each local school board within the borough.<sup>10</sup> The borough president is a full-fledged member and chairman of every local improvement board in his borough. New York City is divided into 24 local improvement districts. The local board of each district consists of the borough president and the members of the City Council elected by the borough within which the district is located. Each borough president also is a member of the powerful Board of Estimate of New York City. A system of weighted voting enables the three city-wide members, viz., the Mayor, the Comptroller, and the President of the Council, to control the actions of this body.

The boroughs lack independent powers of policy-determination, taxation, and borrowing. Their functions are strictly administrative in character. Nearly all of the administrative responsibilities of the borough president pertain to the construction and maintenance of local public works or improvements,<sup>11</sup> such as street pavements, curbs and gutters, sewers and

<sup>9</sup> For a description of the Berlin plan and the arrangement in the Frankfort-Höchst area see R. H. Wells, *German Cities* (Princeton, Princeton University Press, 1932), Chapter VIII. The plan for the Frankfort-Höchst area also was based on the principle of administrative autonomy. Höchst and two smaller municipalities were annexed to Frankfort, but the three annexed communities were united to form a single administrative district for the administration of certain functions of local interest. Some of the governing authorities of the district were members of the Frankfort government. Although legislative and financial power was concentrated in this government, an elective district council possessed the right to be heard on all questions relating to Höchst.

<sup>10</sup> The advisory planning board may advise the City Planning Commission with respect to any matter within the jurisdiction of the latter. Local school boards also have purely advisory powers. A board is provided for each of the 46 districts into which the city is divided. Control over the educational system is vested in a city board of education.

<sup>11</sup> The public works falling within the administrative jurisdiction of the boroughs are those included within the meaning of the term "assessable improvements" as defined by the New York charter. These improvements are financed wholly or in part by special assessments against benefited property. Initiation of proceedings for an assessable improvement on petition of property owners or the borough president is a responsibility of the local improvement boards described above. These boards may authorize improvements involving an expenditure of \$10,000 or less. If the estimated expenses of a proposed improvement exceed this amount, favorable action by the City's Board of Estimate is required.

drains,<sup>12</sup> public baths, and comfort stations. Among other powers of the borough president are the issuance of permits to builders and others to use or open streets, the licensing of cisterns and cesspools, the placement of all signs indicating the names of streets and other public places, and the initial approval of maps subdividing land.<sup>13</sup> The presidents of two boroughs, Queens and Richmond, have the additional power to clean streets which lack permanent pavements.

Before 1938, the borough presidents were empowered to construct and maintain public buildings and to enforce laws relating to the construction and maintenance of private buildings. These important functions now are assigned to newly created departments of the central government.

The trend since the origin of the borough plan in 1897 has been toward a reduction of the administrative functions of the boroughs. However, these subdivisions of the city continue to be represented as such on the Board of Estimate and to receive representation on the central city council in proportion to their voting population. It should be noted, too, that certain of the central administrative departments of the City maintain branch offices in the boroughs.

The chief problems to be solved in establishing an *administrative district* system are: (1) the division of administrative functions between the metropolitan and local authorities; (2) the extent to which the local authorities shall be subject to the administrative direction and control of the metropolitan government in the performance of their duties; (3) the number and size of the administrative districts or boroughs; (4) the arrangements for bringing about an organic relation between the central and local governing agencies.

Under the Berlin and Frankfort-Höchst plans the administrative functions of the component districts were more numerous than those of the New York boroughs, but the greater degree of administrative decentralization in this respect was offset by the fact that the central authorities of Berlin and Frankfort possessed power to direct and control the administrative activity of the local authorities. Within the narrower scope of their administrative functions, on the other hand, the New York borough authorities enjoy greater freedom from central direction and control.

The asserted merits of an *administrative district plan* of metropolitan government are: (1) the safeguarding of local interests through decentralized administration of functions which can be administered properly on a sectional basis; (2) the resultant closer contact between the people and administrative officials; (3) greater popular confidence that proper consideration will be given to sectional needs; (4) adequate provision for the protection and promotion of metropolitan interests by reason of the central administration of matters of metropolitan concern together with the concentration of legislative and financial power in the central authorities.

<sup>12</sup> The construction, maintenance, and operation of intercepting sewers and sewage treatment plants are functions of the City's Department of Public Works.

<sup>13</sup> The borough president may purchase directly supplies, materials, and equipment not exceeding an aggregate expenditure of \$500 in any one calendar month.

Among the major objections to the plan are: (1) its failure to provide local autonomy in policy-determination as well as in administration; (2) the probability that the power of the central authorities will be expanded at the expense of the administrative subdivisions. These arguments are advanced by persons who dislike centralization. On the other hand, there are people who oppose the plan because it provides for decentralized administration. They anticipate diversity in administrative standards to the extent that responsibility for administration is divided.

Although experience with the plan has been too limited to permit an accurate appraisal of its claimed merits and defects, the trend in both Berlin and New York has been toward further centralization. Those who favor a single rather than a dual governmental system for metropolitan areas cite this fact in support of their contention that effective government can be attained only through complete centralization.

(2) **Federal Plan.** This plan of metropolitan government\* involves a division of legislative, financial, and administrative powers between a central government and the governments of the several communities comprising the metropolitan area. In principle, problems of a metropolitan character fall within the jurisdiction of the central metropolitan government, whereas matters of essentially local concern, which can be handled without disadvantage on a sectional basis, are placed under the control of the governments of local communities. Within the field of action assigned to it, each government is empowered to formulate, adopt, and finance such policies as it deems expedient. Ordinarily, too, but not necessarily, the administration of these policies is made the responsibility of the government which determines them.

The term "federated city" has been used to designate this plan of government, and quite properly so, provided the distribution of powers between the metropolitan authorities and those of the component communities is effected by charter provision. If, however, powers may be distributed and redistributed territorially at the pleasure of the central metropolitan government, the system is unitary rather than federal in character.

Although a federal plan of government has nowhere been established for an entire metropolitan area, it has been put into effect for a portion of the London district (England).<sup>14</sup> The relations between the Administrative County of London and 27 Metropolitan Boroughs are based on the federal principle. In area, the Administrative County, which was created in 1888, is about one-sixth the size of the Metropolitan Police District.

Under the London Government Act of 1899 the more than 100 parishes and districts within the Administrative County were consolidated into 28 boroughs of unequal size. One of them afterwards became the City of West-

<sup>14</sup> The governmental needs of the London area are supplied by a bewildering variety of authorities including the City of London, the Administrative County of London, 27 Metropolitan Boroughs, the City of Westminster, a substantial number of county boroughs, municipal boroughs, urban districts, and rural districts, and numerous *ad hoc* agencies like the Metropolitan Police District, the Metropolitan Water Board, the London Passenger Transport Board, and the Port of London Authority.

minster. Each borough was granted important legislative and administrative powers and was provided with a government corresponding rather closely to the organization of other English boroughs.

The distribution of powers between the Administrative County and the boroughs is complex and confusing. It has given rise to numerous jurisdictional disputes. Some subjects are placed under the sole control of the County, some lie within the exclusive jurisdiction of the boroughs, and still others fall within the province of both the county and the borough authorities. Comparison of the activities assigned to the boroughs and to the County shows that there is a division of responsibility in many of the broad fields of governmental service.<sup>15</sup>

The federal plan of government has been proposed for several of the metropolitan areas in the United States, including Pittsburgh and Allegheny County in Pennsylvania, St. Louis, Missouri, Alameda County, California, and Cleveland, Ohio. Although none of the proposals has been put into effect, they afford excellent examples of concrete plans for solving the governmental problems of particular areas.

An amendment to the Pennsylvania constitution in 1928 authorized the state legislature to create a municipal corporation, to be known as the City of Pittsburgh, by consolidating Allegheny County and the cities, boroughs, townships, and poor districts located within it. The legislature was empowered to confer extensive powers on the government of the consolidated city, viz., the powers and duties of the County of Allegheny, those of the poor districts, and other powers appropriate to a municipality. At the same time, the amendment guaranteed the continued existence of the cities, boroughs, and townships as divisions of the consolidated city, enumerated certain powers which these component municipalities were to possess,<sup>16</sup> and reserved to them all other powers not specifically granted by charter provision to the government of the consolidated city. Arrangements were made for the union of two or more municipal divisions by a majority popular vote in each, and for the transfer of powers to the consolidated city in the same manner, subject to acceptance by the latter's board of commissioners.

The charter originally submitted to the legislature by the Metropolitan

<sup>15</sup> Among the matters entirely under the control of the County are fire protection, education, public assistance, and weights and measures inspection and verification. The exclusive jurisdiction of the boroughs includes the collection and disposal of refuse, the cleaning and lighting of streets, and the management of local cemeteries. Examples of subjects with which both the County and the boroughs deal are sewerage, public health, and social welfare. The County constructs and maintains main sewers and sewage disposal facilities, whereas the boroughs provide for the construction and maintenance of subsidiary sewers. The provision of hospitals, clinics, etc., for venereal and infectious diseases is a County responsibility, but the abatement of nuisances, milk inspection, and maternal and child welfare (other than institutional treatment) are functions of the boroughs. See J. H. Warren, *The English Local Government System* (London, Allen and Unwin, Ltd., 1946), Appendix A.

<sup>16</sup> The most important of these enumerated powers were the following: to lay and collect taxes; to incur indebtedness; to maintain local police and fire departments; and to acquire, own, construct, maintain, operate or contract for all kinds of public property, works, improvements, utilities, or services which shall be within the municipal division and principally for the use and benefit of its inhabitants.



Plan Commission vested broad powers<sup>17</sup> in the government of the consolidated city, but the instrument eventually adopted by the legislature contained a more limited grant of authority than the commission had recommended. This charter was defeated at the polls by a narrow margin.

The vote required for adoption was a majority of the electors voting thereon in the county and a two-thirds majority of the electors voting thereon in each of a majority of the component cities, boroughs, and townships. In 1933, an amendment reduced the severe two-thirds majority requirement to an ordinary majority. Other changes were adopted in the interest of greater clarity, but the essential features of the 1928 provision were retained. Up to the time of writing, however, no charter for metropolitan Pittsburgh has been put into effect.<sup>18</sup>

The plans proposed for St. Louis and Cleveland were basically the same as the one prepared for Pittsburgh. On the other hand, the charters drafted for Alameda County, California, in 1916 and 1921 differed in at least two important respects. In the first place, the eleven component boroughs were to possess only such powers as were specifically granted to them, all other powers being vested in the city-county (metropolitan) government; and, secondly, the boroughs were to exercise only legislative power, the city-county government being charged with the administration of both metropolitan and borough policies. The borough boards were to determine local policy, appropriate money for the administration of adopted policies, fix the borough tax rate, and incur indebtedness with the approval of the borough voters. They also were empowered to investigate the conduct of the central administrative departments in the expenditure of borough funds. The combination of central administration with a division of legislative power between the metropolitan and borough authorities was the most unique feature of the abortive Alameda plan.<sup>19</sup>

The federal plan represents a compromise between extreme centralization and extreme decentralization. Therein lies its chief merit. It possesses value as a practicable device for reconciling the conflict of interests which hinders solution of the metropolitan problem. Its primary shortcomings lie in the difficulty of drawing a line of demarcation between matters of metropolitan and local concern, in the numerous opportunities for jurisdictional disputes,

<sup>17</sup> The government of the consolidated city was to possess the following powers: to make a master plan; to enact zoning ordinances and to make general regulations with respect to local zoning ordinances; to control monuments and other public art; to construct and maintain through-highways and to regulate their use by public utilities; to regulate billboards and structures on through-traffic streets and county roads; to enact uniform traffic regulations for through-streets and to prescribe the type and manner of installation of signals on all streets; to construct and operate transportation systems for passenger, freight, or express traffic; to construct and operate waterworks; to establish and maintain a police department in addition to local police departments; to recommend standards to local fire departments and to make appropriations for those living up to those standards; to enact and enforce health regulations; to regulate smoke; to care for the poor, insane, etc.; to assess property for taxation; to levy special assessments; to create special taxing districts for supplying services not for the exclusive use of one unit, and to exercise the powers of Allegheny County.

<sup>18</sup> For an account of recent efforts to solve some of the problems of metropolitan Pittsburgh, see M. Stalley, "Horizons Beyond the Smoke," *National Municipal Review*, Vol. XXXVI, No. 10, November, 1947, pp. 558-564.

<sup>19</sup> Committee on Metropolitan Government, *op. cit.*, pp. 372-376.

and in the continued existence of a multiplicity of governmental units within the metropolitan area.

**City-County Consolidation and Separation.** City-county consolidation and city-county separation sometimes are listed among the various plans for solving the governmental problems of metropolitan areas. Although both proposals involve a reduction in the number of governments operating within a given area, neither one meets the requirements of effective metropolitan government unless associated with other changes in the political arrangements of a metropolitan district.

Even if the boundaries of a given metropolitan area were contained within those of a single county, consolidation of the governments of the county and the central city would result in the establishment of an adequate metropolitan authority only if the smaller political units within the county were abolished or if governmental power were properly distributed between them and the consolidated government. In either case, the resultant arrangements would correspond in type to plans which already have been discussed.

If the central city of a metropolitan area were organized as a separate county, the only effect would be to add the usual powers of the county to those of the city government. An unnecessary layer of government would be eliminated, but nothing would be accomplished by way of ending the extreme political decentralization throughout the entire metropolitan area unless the separation were accompanied by extensive annexations and consolidations.

An objection to either city-county separation or city-county consolidation is that county status frequently adds to the legal obstacles which must be overcome in effecting future territorial expansion and often involves legal complications in regard to governmental machinery and powers.<sup>20</sup>

**Appraisal of Proposed Solutions.** Of the various plans for meeting the governmental needs of metropolitan areas, only three are sufficiently comprehensive to afford permanent relief on a large scale. These are the *federal*, the *administrative district*, and the highly centralized *single government* systems. The others, extra-territorial authority for the central city, intergovernmental cooperation, and *ad hoc* authorities, are at best makeshift arrangements which may mitigate but not terminate a difficult situation. However, no one plan should be earmarked as superior to any and all others because the practical value of a plan depends on conditions peculiar to a particular area. For small metropolitan areas in the earlier stages of development, cooperative arrangements may prove adequate, whereas in the later stages, when expansion in population and territory has multiplied and complicated matters of metropolitan concern, a more drastic and far-reaching remedy may be necessary.

<sup>20</sup> City-county consolidations and separations in the United States are discussed in Committee on Metropolitan Government, *op. cit.*, Chapters X and XI, and in V. Jones, *Metropolitan Government* (Chicago, The University of Chicago Press, 1942) pp. 130-142. A recent city-county consolidation is that of the city of Baton Rouge and East Baton Rouge Parish, Louisiana (1947).

One of the criteria of a good plan is flexibility. Is it capable of meeting the changing needs of a rapidly growing area? Does it include provisions for extending legal boundaries to keep pace with metropolitan growth? Another criterion is the adequacy of the arrangements which are made for the handling of matters of local concern. Is it probable that local interests will be properly safeguarded? Finally, there is the requirement of comprehensiveness. Does the plan permit the coordinated solution of all, not merely some, of the metropolitan problems?

#### REASONS FOR SLOW PROGRESS IN SOLVING THE GOVERNMENTAL PROBLEMS OF METROPOLITAN AREAS

In view of the great need for a solution of the governmental problems of metropolitan areas, the fact that so little has been accomplished may seem surprising. Social inertia plus effective opposition afford an explanation. Many people fail to recognize the need, and many of those who do are too busy, too indifferent, or too selfish to do anything about it. Political leaders and officials who might be expected to head the movement for reform often are found in the ranks of the opposition. The persistent leadership which is needed to fight a long and tedious battle is conspicuous by its absence.<sup>21</sup>

Opposition comes from all quarters. Local officials will generally oppose any movement which may result in the elimination of units of government and in a reduction in the number of public offices and employment. Spoils politicians entertain the same idea and prefer a complicated governmental system which confuses the voting population and promotes the evasion of responsibility. Local pride, a strong desire for local autonomy, and distrust of the central city motivate many influential citizens who are unduly suspicious of centralizing tendencies in the governmental field. Again, private interest-groups which may benefit in specific ways from extreme governmental decentralization usually are to be found in the ranks of the opposition.

Communities with a low tax rate are afraid that their tax burdens will be increased, and this fear blinds them to the opportunity for reducing *community costs* through an effective metropolitan governmental system. Few people appreciate the fact that the cost of life in a community is not merely a matter of dollars and cents spent in support of some governmental agency.

Other factors which contribute to the difficulty of establishing satisfactory metropolitan governments are the legal obstacles to be overcome and inability to agree on a plan which will prove effective. Disagreement as to the proper remedy for the political ailments of metropolitan areas, if not a cause of inaction, strengthens the opposition to a particular proposal.

To obtain adequate legal authority, the enactment of appropriate enabling laws is usually necessary, and, in some states, constitutional amendments

<sup>21</sup> The politics of integration are discussed at length in V. Jones, *op. cit.*, Chapters IX-XI.

are required. It is by no means easy to obtain favorable action on the part of state legislative and constituent authorities. For example, in 1938 an amendment to the Pennsylvania constitution designed to permit complete city-county consolidation in Philadelphia was defeated by the voters of the state even though favored by a substantial vote in Philadelphia itself. An additional legal barrier is encountered if a metropolitan area is included within the boundaries of two or more states. Under such circumstances, interstate agreements, which are subject to Congressional approval, must be negotiated.

In spite of the difficulties to be surmounted in solving the governmental problems of metropolitan areas, there is no reason for being pessimistic regarding the ultimate outcome. Sooner or later something will have to be done to improve the conditions of life in these areas, and as the average individual becomes aware of the seriousness of the situation and its effect on his well-being, the forces which so far have blocked a satisfactory solution probably will be overpowered.

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## CHAPTER XI

### ELECTIVE OFFICERS AND ELECTION METHODS

#### *Outline*

#### **Proper Application of the Elective Principle**

##### **Determining Factors**

##### **Past and Present Practice**

##### **Election of Policy-Determining Officials**

- (1) Councilmen
- (2) The Chief Executive

##### **Objections to Election of Administrative Officers**

#### **Methods of Election**

##### **Choice of An Election Method**

##### **Single Choice-Plurality System**

##### **Majority Choice Systems**

- (1) Second Ballot
- (2) Bucklin System
- (3) The Alternative Vote
- (4) Hallett System
- (5) Nanson System

##### **Methods Designed to Provide Minority Representation**

- (1) Ward System
- (2) Limited Voting
- (3) Cumulative Voting
- (4) Proportional Representation

A CHARACTERISTIC feature of democratic forms of municipal government is the selection of certain officials by the voters. Frequently, too, the municipal electorate is called upon to vote on proposed charters, charter amendments, and sundry questions of policy.

Acceptance of the principle of popular election of officeholders creates a number of complex problems which require satisfactory solution if the avowed objectives of elections are to be realized and if the cause of good government is to be served. Among the more important of these problems are the following: (1) determination of the positions to be filled by popular vote; (2) selection of proper methods of election for each type of position; (3) the establishment of satisfactory means of nominating candidates; (4) the determination of appropriate voting qualifications, and (5) the safeguarding of elections against objectionable and fraudulent practices.

Only the last two of these problems arise in connection with popular votes on propositions like charter amendments or bond issues. However,

there are other questions to be settled with respect to voting on issues, viz.: the matters which should be submitted to the voters for approval; the circumstances under which submission shall take place; the form in which questions should appear on the ballot, and the size of the vote required for approval.

This chapter and the one immediately following will be devoted to a discussion of the question of proper application of the elective principle and to an explanation and appraisal of different election methods. Thereafter consideration will be given to nominating methods, the safeguarding of elections, voting qualifications, non-voting, the initiative, the referendum, and the recall.

### PROPER APPLICATION OF THE ELECTIVE PRINCIPLE

**Determining Factors.** In deciding whether or not to apply the elective principle to particular positions, careful consideration should be given to a number of factors, viz.: the character of the office and the qualities which the officeholder should possess; the probability that popular election will result in the choice of a competent person; the effect of popular election on the organization and operation of the city's government; the importance of popular election from the standpoint of responsible government and effective popular control; the extent of the total voting load which the electorate can bear successfully; and the political traditions of the community. More often than not the decision to make a given office elective has been reached without taking into account all of the consequences of this method of selection.

**Past and Present Practice.** The history of American city government reveals certain tendencies in the application of the elective principle. At first the principle was applied sparingly, thereafter its application was extended on a large scale, and more recently its use has been undergoing a curtailment in the direction of the original practice.

During the colonial period and until approximately the beginning of the second quarter of the nineteenth century, comparatively few city officials other than councillors were chosen by popular vote. In colonial times municipal corporations were either "close" or "open" in type.<sup>1</sup> The distinguishing characteristics of the close corporation were its limited membership which normally was confined to the mayor, recorder, alderman, and councillors or assistants; the naming of the original members in the charter; and the arrangement for perpetuation by cooption, i.e., choice of successors by the aforesaid members.

Open corporations operated under "democratic" charters which always provided for popular election of councillors but usually arranged for appoint-

<sup>1</sup> "Omitting the early Virginia corporations and the borough towns of North Carolina, there were probably eight close corporations and 16 more or less democratic among the 24 incorporations of colonial times," E. S. Griffith, *History of American City Government* (New York, Oxford University Press, 1938), p. 194.

ment of the other members of the council, viz., the mayor, recorder, and aldermen. In a number of instances aldermen were elected; the mayor only rarely. Although the election of assessors was a rather common practice, most minor officials were appointive.

Following the break with Great Britain, certain significant changes in municipal government occurred immediately. Among them were the granting of charters by legislatures rather than by governors and the disappearance of close corporations. On the whole, however, the machinery of city government and the methods of selecting officials underwent little alteration for several decades. There were relatively few extensions of the elective principle. Departures from colonial practice became more frequent toward the end of this early period and heralded the transformation which eventually took place.<sup>2</sup>

From 1825 to about 1900 the prevailing tendency was to use the method of popular election not only for the selection of councilmen but also for the choice of mayor and even minor executive, administrative, and judicial officials. The municipal electorate was expected to select members of the council; the mayor; various administrative officers such as the treasurer, comptroller, assessor, tax collector, street commissioner, marshal, solicitor, and clerk; members of certain boards and commissions; and the judges of local courts. Of course, the number and type of elective positions were not everywhere the same, but, generally speaking, the "long ballot" became the fashion of the times, largely because of the influence of the dogmas of Jacksonian democracy.

The beginning of a reaction became noticeable toward the end of the century, and since 1900 the movement for a "short ballot" has gained headway. Even so, the voters of most urban communities still elect various officials who might better be appointed to office. Under the strong mayor-council, commission, and council-manager plans of government, which may be described as twentieth century models, comparatively few offices are filled by popular vote. It is noteworthy that now, as during the eighteenth century, although for different reasons, the most authoritative opinion favors the popular election of councilmen only, with the exception of the chief executive under certain forms of government.

**Election of Policy-Determining Officials.** Experience with democratic government in the United States and other countries indicates that as a general rule the elective principle should be limited in application to those key positions which involve "determination of policy" in the broad sense. The most practicable means of achieving popular government is to provide for the settlement of questions of general policy by the directly chosen representatives of the people. At the same time better government is likely to be

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<sup>2</sup> For a description of colonial practice see E. S. Griffith, *op. cit.*, Chapters VII and VIII. A brief but excellent account of the colonial situation and developments during the early national period is presented in T. H. Reed, *Municipal Government in the United States*, rev. ed. (New York, Appleton-Century, 1934), Chapters V and VI.



obtained if the administration of adopted policies is made the responsibility of an appointed personnel.

In the field of city government, policy determination involves the making of decisions regarding the services to be rendered; the adoption of rules and regulations pertaining to the conduct of individuals, e.g., traffic regulations, zoning ordinances, and building codes; and the raising of revenue and the authorization of expenditures. Administration includes all of the activities which are carried on in the actual rendition of services, the enforcement of rules and regulations, the collection of revenues, and the expenditure of public funds. City employees who pave streets, operate water filtration plants, inspect food or collect wastes are performing an administrative function. So are the chief executive and the department heads who direct, supervise, and coordinate the work of the host of minor officials and employees who are engaged in discharging administrative duties of the type mentioned above.

The functions of direction, supervision, and coordination are commonly described as executive in character. They call for the exercise of important discretionary powers in the administrative field, including the determination of administrative policy. However, executive discretion differs from legislative discretion in that the latter is exercised in the making of authoritative decisions regarding the objectives of city government, whereas the former pertains to the choice of ways and means of carrying into effect predetermined policies.

(1) **Councilmen.** In cities, final decision regarding policies normally rests with the city council which is composed, at least theoretically, of representatives of the people. Accordingly, popular election of councilmen is advocated as an essential means of securing responsible government. Unless the people are permitted to choose their own representatives, effective popular control is generally believed to be impossible of achievement. The people of the United States are disinclined to question the soundness of this belief, and whatever the form of city government, councilmen almost invariably are chosen by the municipal electorate. Departures from this universal practice have occurred rarely and then only under extraordinary circumstances, such as financial chaos or emergency situations resulting from earthquakes or floods. It should be noted, however, that the residents of Washington, D. C., are denied the privilege of choosing their governing authorities.

Closely associated with the conviction that councilmen should be elected is the belief that the qualifications for service on councils ought to be sufficiently liberal to make practically all adult citizens eligible. The usual citizenship, age, and residence requirements can be met by most persons. Simple qualifications of this type indicate that laymen rather than experts are expected to serve on city councils. The expert is not necessarily a good representative of the people. Laymen are qualified to decide what a community wants in the way of governmental service, what it can afford and is willing to spend, and how conflicts of interest are to be adjusted.

Integrity, intelligence, fairly sound judgment, interest in city problems, and devotion to community welfare are the qualities which councilmen should possess. It is generally believed that voters are capable of selecting representatives who measure up to these requirements, provided, however, that the opportunity to do so is afforded through the establishment of proper methods of nomination and election. If incompetents are now and then chosen, that price is not too great to pay for the general benefits of popular government.

(2) **The Chief Executive.** Although election of councilmen meets with universal approval, opinion is divided concerning the desirability of selecting the chief executive by popular vote. The primary cause of disagreement is the dual rôle of the chief executive in the governmental process. He not only serves as directing head of the administrative services, but also plays a vital part in the formulation of general policies.

Advocates of popular election stress the legislative powers usually assigned to the chief executive, the great weight that necessarily attaches to his views concerning matters of policy by reason of his administrative experiences, and the leadership in policy determination which the people expect of him and which he normally provides. They insist that the principles of democracy require that an official of this type be chosen by the voters.

Moreover, they point to the American tradition of an elective chief executive and to the effectiveness of popular election of this officer as a means of promoting vigorous political leadership and stimulating widespread interest in public affairs. Choice of the chief executive by the voters also is favored by those persons who firmly believe in the separation of powers and check and balance doctrines of governmental organization.

Opposition to election of the chief executive is based on a variety of considerations. The specific reasons will be presented in the following section which is devoted to a discussion of the usual objections to popular election of administrative functionaries. Suffice it to observe for the moment that those who prefer an appointive chief executive are largely concerned over the adverse effects of election on administration. At the same time they believe that participation of an appointive executive in policy determination in no way endangers popular government, if final decision on questions of policy rests with direct representatives of the people and if proper provision be made to insure subordination of the executive to the latter.

**Objections to Election of Administrative Officers.** The choice of executive and administrative officials by popular vote is looked upon with disfavor by many sincere friends of political democracy. Attention is directed to the unfortunate consequences of election with respect to: (1) the caliber of personnel; (2) the attractiveness of public service; (3) the quality of governmental organization; (4) standards of service; (5) effective popular control; and (6) intelligent voting.

Elections are improper devices for the selection of capable executives, trained administrators, and skilled technicians. Political campaigns are won and lost on the basis of personalities, principles and policies, appeals to sentiment, oratorical ability, the willingness to make promises, political backing, and sundry other considerations which have little or no bearing on fitness for holding executive or administrative positions.

The proper way to select competent persons for these positions is through careful consideration of the qualifications of available men and women. What the municipal electorate cannot do well in a general or special election, almost any small body of men can do reasonably well by conference, deliberation, discussion, and resort to the techniques of appointment to office. The office should seek the man, not the man the office, the latter being almost always the case in connection with elections. A proper canvassing of the personnel market seldom occurs when a position is filled by popular vote.

Public service becomes unattractive to many persons if it depends on the outcome of elections. Qualified executives, administrators, and technicians often are unwilling to seek positions which require political campaigning at periodic intervals. They find vote-seeking unpleasant and realize that merit is usually a minor factor in determining the result of an election. Moreover, they dislike the uncertainty of tenure associated with election for a limited term of service.

The adverse effects of election on governmental organization are attributable to the fact that an elected official is responsible to his constituents, but not to other officials with whom he is expected to cooperate. If administrative officials other than the chief executive are chosen by popular vote, an integrated administrative organization is necessarily sacrificed.

Unless lines of authority and responsibility converge in the office of the chief executive, there is likely to be conflict, lack of cooperation, and confusion in administration. The degree of disintegration would depend, of course, upon the number and importance of the elective administrators. Certainly, careful consideration ought to be given to the effect of popular election on administrative organization and operation before deciding to make a given position elective.

The choice of executive and administrative officers by the municipal electorate increases the probability that administration will be influenced unduly by political considerations. What is administratively sound may prove politically inexpedient, and it is altogether likely that the elective official will show more concern for votes, making campaign promises, and the spoils of office than for proper administrative practice. Evidence to substantiate this objection is only too plentiful.

Election of administrators also is undesirable from the standpoint of responsible government and effective popular control. The greater the number of elective administrators, the greater the diffusion of power and responsibility and the more difficult it becomes for the voters to place the blame for misgovernment both accurately and fairly. Popular control is most likely to be realized in practice as well as in theory if power and responsi-

bility are concentrated and definitely located and if administrative agencies are subordinated to policy-determining authorities who have been chosen by the voters. With proper organization, it is unnecessary to provide for the popular election of other than a few "key" officials.

Finally, if administrative officials, as well as councilmen, are selected by popular vote, the ballot becomes "long", the electorate is overburdened, and the voter encounters difficulty in exercising the suffrage wisely. Even the most intelligent and conscientious voters are unable to pass sound judgment on the merits of numerous candidates in competition for a great variety of positions. Blind voting is the inevitable result of a "long ballot." Politicians usually reap the benefits.

### METHODS OF ELECTION

The selection of appropriate methods of election is just as important a matter as determination of the positions which should be filled by popular vote. Unless satisfactory methods are established, the individual voter may be denied the opportunity of exerting an effective influence on the outcome of an election and consequently the real will of the electorate may be circumvented. Certainly, the potential advantages of popular election never will be fully attained if improper methods are utilized.

**Choice of an Election Method.** A basic consideration in selecting an election method is the character of the government organ for which a choice of personnel is to be made by the voters. Of primary importance are the functions of this organ and the number of persons in whom its authority is vested. Methods suitable for the election of a single officer, e.g., a mayor, may prove unsatisfactory if utilized for electing the personnel of a collegiate body which, usually because of its functions, but sometimes for other reasons, is intended to be representative in character. Although the attainment of proper representation on councils, commissions, and boards is not merely a problem in election methods, the importance of the latter as a means to this end is widely recognized.

A number of other factors should receive consideration in choosing a method of election. Among them are the following: (1) the extent to which the voter is permitted to express his opinion concerning the merits of competing candidates; (2) the effectiveness of the individual voter's ballot; (3) the size of the vote necessary to elect, i.e., the rule for determining the winner of an election; (4) the ease of counting the ballots and ascertaining the result; (5) the simplicity of the method from the standpoint of the average voter's ability to comprehend it; (6) the method of nomination necessitated; (7) the expense; and (8) the opportunities for fraudulent practices. Of these factors, the first five probably are the most important.

**Single Choice-Plurality System.** The election method most widely used in American cities combines the plurality rule with the expression of a single choice by the voter. This single choice, which is the voter's

first choice among the several competing candidates, is indicated by marking a cross after the name of the favored candidate. If but one candidate is to be elected, the voter is allowed to cast only one vote, but if several are to be chosen, the voter may cast a corresponding number of votes. Thus if there be ten candidates, three of whom are to be elected, each voter is entitled to three votes which must be divided among three candidates. No opportunity is given the voter to concentrate his votes upon one candidate or to rate the candidates according to his preference.<sup>8</sup>

The winning candidates are determined according to the plurality rule. If three are to be chosen, the three highest are declared elected; if only one, the highest is the winner, regardless of the percentage of the total vote received.

The chief advantages of this method of election are: (1) its simplicity in the matter of casting and counting ballots, and (2) the fact that it is easily understood by the voters. All that is required of the voter is the indication of his first choice. The total vote of each candidate is readily determined and the candidate obtaining the most votes is declared the winner. Neither the voters nor the canvassers have to bother about first, second, or other preferences, and the canvassers can ascertain the result of the election without transferring ballots, eliminating candidates, or undertaking complicated calculations. Second elections are unnecessary. If voting machines are utilized, determination of the result is almost entirely mechanical.

The single choice-plurality election is defective in several respects. In the first place, the effectiveness of the individual voter's ballot is impaired because no provision is made for the expression and counting of preferences. The voter cannot shift his support to his second or third choice if his first choice candidate should prove too weak to win the election. Consequently, for fear of aiding the election of an undesirable candidate, the voter may refrain from casting his ballot for his real first choice. Moreover, for all practical purposes, those voters who failed to vote for the candidate obtaining a plurality might just as well have stayed home on election day.

A second defect, closely associated with the first, is the fact that under the plurality rule minority candidates can be elected. If there are more than two candidates and no candidate is preferred by the majority to all of the other candidates taken collectively, the numerically strongest minority wins the election. The majority loses because of division of opinion as to which candidate is the best. For example, if A, B, and C are candidates for the office of mayor, and A's vote is 5,000, B's 6,000, and C's 4,000, B is elected under the plurality rule in spite of the fact that only 40% of the voters consider him the best man. The other 60% are opposed to B, but since the voters have not been permitted to express preferences, there is no way of telling whether the majority prefer either A or C to B.

Finally, use of the single choice-plurality system for the election of members of a representative body, e.g., a council, is objectionable in that it usually results in the over-representation of either the majority or the most

<sup>8</sup> Cumulative and limited voting systems are discussed below.

powerful minority. In fact, with election at large, a well-organized majority, or if there be none, the strongest minority will win all of the seats. Utilization of the ward system of electing representatives ordinarily prevents clean sweeps, but nevertheless fails to insure group representation in proportion to relative voting strength. Denial of representation to, or under-representation of, some groups of voters is inevitable under the single choice-plurality system, whether used in connection with the "at large" or the "ward" plans of election. Substitution of the majority for the plurality rule in determining the winner would fail to overcome this weakness.

**Majority Choice Systems.** If a single official or the members of a non-representative board or commission are to be chosen, it would seem advisable, in view of the principles of democracy, to utilize some method of election which will result in the choice of a majority rather than a minority candidate. Among the methods designed to produce majority selections are the second ballot, the Bucklin plan, the alternative vote, the Nanson system, and the Hallett plan. Some, but not all, of these plans fulfill the requirements of a satisfactory system.

The criterion to be applied in appraising a majority choice system may be stated as follows: (1) if there are more than two candidates competing for an office, the elected candidate must be preferred by more than half of the voters expressing an opinion either to all of the other candidates considered collectively or to each of the other candidates taken singly; and (2) if there be no such candidate, no candidate should be declared defeated unless at least one of his competitors is preferred by more than half of the voters expressing a preference between the two. Of the majority election methods mentioned in the preceding paragraph, only the alternative vote, the Nanson, and the Hallett systems merit a favorable rating from the standpoint of this criterion.

(1) **Second Ballot.** The second ballot plan involves the holding of elections which are based on the common practice of allowing the voter to express but one choice. If one of the candidates receives a majority at the first election, he usually is declared elected. If no one obtains a majority, this first election serves the purpose of eliminating all but the two highest candidates,<sup>4</sup> and a second election is held to enable the voters to choose between the two. In some jurisdictions the second election takes place even if a majority vote is polled at the first balloting by one of the candidates. This procedure is followed in many of the American cities which use the non-partisan primary as a nominating device.

The second ballot plan is deficient in several respects as a means of securing election by a majority. Since the voters are unable to express preferences, the elimination of all candidates except the two highest for each office may cause the defeat of a candidate even though no other candidate is preferred

<sup>4</sup>If two or more candidates are to be chosen at the final election, the number of candidates surviving the preliminary is equal to twice the number to be elected, e.g., the four highest if two are to be elected.

to him by more than half of the voters. There is no safeguard against this occurrence.

Furthermore, the election of one of two candidates by majority vote at the second election does not indicate that the winner is preferred by a majority to each candidate, taken singly, who competed in the first election. One of the eliminated candidates might have been the true majority choice. Other objections are the expense of holding two elections and the additional burden imposed on the voters. At best, the second ballot is a crude method of majority voting.

(2) **Bucklin System.** The Bucklin system of majority preferential voting was first used in 1909 in Grand Junction, Colorado, for the purpose of selecting the five members of the city commission. By 1923 it had been adopted by 55 cities. Of these, about four-fifths operated under the commission plan of city government and more than half were located in New Jersey. At one time or another the Bucklin scheme was used to elect the mayors of Cleveland, Columbus, and Toledo, Ohio and various officials of the city and county of San Francisco. Information concerning its current status in the United States is lacking, but it appears to have lost what little popularity it once had and probably is used in comparatively few urban communities at the present time.

Under the Bucklin plan, the names of candidates for a given office are printed on the ballot in a vertical column which is paralleled by three columns marked first, second, and third choice. Sometimes the third column is designated "other choices." The voter is instructed to indicate his first, second, and third choices by marking a cross opposite the name of the preferred candidates in the appropriate columns. If the third column is for "other choices," the voter is permitted to indicate as many as he desires, provided, however, that no candidate may be given more than one choice. If more than one candidate is to be elected, the voter is entitled to express as many choices of each grade as there are offices to be filled.

To be elected, a candidate must obtain a majority, i.e., more than half, of the total number of ballots (not choices) cast for the office for which he is competing. The first step in ascertaining the result is determination of the number of first choices received by each candidate. If some candidate proves to be the first choice of a majority of the voters, he is declared elected and no consideration is given to second and other choices.

In the event that no candidate has gained a majority, the second choices polled by each candidate are added to his first choices, and if any candidate receives a total of first and second choices amounting to a majority of the total number of ballots cast, he is elected and no further count is necessary. Should more than one candidate obtain a majority at this stage of the count, the one with the largest majority is the winner. The possibility that more than one competitor may receive a majority is due to the fact that if every voter expresses his first and second choices, the total of choices is twice as large as the number of ballots cast.

If the counting of second choices fails to product a majority candidate, the third or other choices are added to firsts and seconds. The candidate then obtaining the highest total wins the election even if his vote falls short of a majority.

The Bucklin system has several serious defects. In the first place, the election chances of the voter's first choice candidate may be impaired by the indication of a second choice, and both his first and second choices may suffer defeat because of the expression of third or other choices. The explanation lies in the practice of adding first, second, and other choices without eliminating candidates or transferring ballots.

Suppose, for example, that first choice votes are divided among four candidates as follows: A, 100; B, 85; C, 110; and D, 70. Since the total number of ballots cast is 365, a candidate must poll at least 183 votes to be elected. In the example given, no candidate has a majority as a result of the first choice count. The next step is to add the second choices received by each candidate. Assuming that A obtains 95 second choices; B, 90; C, 71; and D, 109, the totals become A, 195, B, 175, C, 181, and D, 179. Having a majority, A is elected. If 13 of the voters designating A as their second choice had merely indicated their first choice, A would not have been elected at this stage of the count and any one of the competing candidates might have emerged as the winner upon consideration of third or other choices. By expressing second choices, the 13 voters clearly injured the chances of their first choice candidates. On the other hand, if no voters were to express second and other choices, an election under the Bucklin plan would differ in no way from the customary single choice-plurality system.

A second defect of the Bucklin plan is its failure to insure election of the candidate preferred by a majority of the voters to each of the other candidates taken singly. In the example given, A was elected because his combined total of first and second choices constituted a majority. However, this majority included the votes of 95 electors who preferred some other candidate to A. Consequently, the only information conveyed by the result was that 195 voters considered A to be one of the two best candidates. If a candidate is elected by reason of the counting of third choices, the only conclusion warranted is that he is considered one of the three best candidates by the voters who supported him.

Aside from the advantage of simplicity as compared with certain other majority preferential systems, the chief merit of the Bucklin plan is that it enables a divided majority to prevent the election of the least desirable of several candidates. Such a candidate, even though polling a plurality of first choice votes, can be defeated if the voters constituting the divided majority confine their second and other choices to his competitors.

An advantage of the Bucklin system, as compared with the second ballot, is that a second election is unnecessary. The preferential ballot enables the voter to indicate how he would vote if successive elections were held.



(3) **The Alternative Vote.** A better device for majority preferential voting is the alternative vote system. Its distinctive features are: (1) a preferential ballot, and (2) determination of the result by a counting process which involves the transfer of ballots.

As a rule,<sup>6</sup> the voter is instructed to rate *all* of the candidates competing for an office in the order of his preference. This expression of preferences is accomplished by writing the appropriate number opposite the name of each candidate in the space provided for that purpose. The number "1" indicates the first choice, "2" the second, "3" the third, "4" the fourth, and so on.

The first step in ascertaining the choice of the majority is to distribute ballots among the competing candidates according to indicated first choices. Should one of the nominees prove to be the first choice of more than half of the voters, he wins the election and no further count is necessary.

If there be no such candidate, the one with the fewest votes is declared defeated and the ballots on which he was designated the first choice are distributed among the other candidates according to the second choice marked on each. Following this transfer of the defeated candidate's ballots, the new total for each surviving candidate is determined. Any one with a majority is declared elected.

If the foregoing distribution fails to produce a majority candidate, the lowest competitor at this second stage of the count is eliminated. Each of his ballots is transferred to the continuing candidates according to the next available preference marked thereon. The availability of an expressed preference depends on the status of the candidate next in order of rating to the candidate whose ballots are being distributed. Thus a ballot marked first choice for the eliminated candidate would be shifted to the voter's second choice, provided the latter had not been defeated at an earlier stage of the count. If so, the ballot would be transferred to the third choice candidate if he were still in the running; or to the continuing candidate next in order of preference if the third choice had been eliminated. As before, once the transfer of the defeated nominee's ballots has been completed, totals are determined.

This process of transferring the ballots of the candidate with the lowest total of votes following each successive stage of the count continues until some candidate obtains a majority or until only two remain. In the latter event the final step is to ascertain which of the two is preferred by more than half of the voters who have recorded an opinion regarding them.

The alternative vote accomplishes in one election a result which might have been achieved by holding a succession of elections. By rating candidates in the order of preference, the voter indicates how he would vote in each of a series of elections if the election immediately preceding were to result in the elimination of his favorite among the competing candidates. The only difference is that if there were a sufficient time interval between successive elections, the elector might vote differently either because of persuasion or by reason of changed conditions.

<sup>6</sup>Sometimes a limitation is placed on the number of preferences which the voter may express.

An advantage of the alternative vote as compared to the Bucklin system is that the voter's expression of preferences never can injure the chances of a candidate whom he has rated higher than some other competitor. Such is the case because a ballot is transferred to the voter's second choice only *after* the elimination of his first choice, to his third choice *after* the defeat of his first and second choices, and so on with subsequent choices.

The alternative vote almost always results in the election of the candidate preferred by a majority of the voters. The possibility of error is due to the elimination of the lowest candidate at each stage of the count without knowing beyond a doubt that he has no chance of being elected. However, the assumption that at least one of the higher candidates is preferred by a majority to the lowest seldom is unwarranted.

The alternative vote has been used to a very limited extent in public elections in the United States. Among the few municipalities which now employ it are Hopkins, Minnesota, and Cambridge and Lowell, Massachusetts. Hopkins uses it for election of the mayor under the manager plan and also for the election of municipal judges. In Cambridge and Lowell, vacancies which occur in the council are filled by a process which amounts to the alternative vote. The councils of these communities are chosen by proportional representation and the preferences expressed on the ballots received by the vacating member are used in the choice of a successor by majority vote.

(4) **Hallett System.** The one defect of the alternative vote is overcome under the Hallett system of majority preferential voting by a method of counting which insures that no candidate will be eliminated unless some other candidate is preferred by a majority of the voters who have expressed an opinion concerning the two. This objective is achieved by a process of comparison which is resorted to only if no candidate proves to be the first choice of a majority of the voters.

The highest candidate at successive stages of the count is compared with the largest group of lowest candidates whose combined total of votes is less than half of the total vote for all candidates. At each comparison the ballots of a "middle" group composed of all candidates other than the highest and the aforesaid group of lowest candidates are transferred temporarily to the candidates being compared. The transfers are made according to the expressed preferences of the voters. If any candidate within the compared group obtains a majority, the others under consideration are declared defeated.

If no one obtains a majority, the candidates just subjected to comparison are in turn classified. The candidate who now is highest is compared in the same manner with the lowest group. This process is repeated until some candidate is shown to be preferred by a majority of the voters to the other candidates comprising the "compared" group. The latter are permanently eliminated.

The ballots of these defeated candidates then are transferred to the

surviving competitors, including all "middle" candidates who were temporarily excluded, according to each voter's highest preference among the survivors. These transfers are added to the first choices originally obtained by each continuing candidate. If no one receives a majority, the highest candidate at this stage of the count is compared, as before, with the "lowest" group of undefeated candidates. This process of comparison and transfer of the ballots of defeated candidates is continued until some candidate obtains the required majority.

Although the Hallett plan fulfills the requirements of a dependable majority preferential system, it is more complicated than the alternative vote. The counting process is complex and time consuming; and the average voter probably would find it difficult to understand. In all likelihood it is for these reasons that the system is not in public use.

(5) **Nanson System.** Another reliable but complex system of majority preferential voting is the Nanson plan which was developed about 70 years ago by E. J. Nanson, Professor of Mathematics at the University of Melbourne. Ballots are prepared in the same form and marked by the voters in the same way as under the alternative vote and Hallett plans. The distinguishing feature of the Nanson system is the method of ascertaining the majority candidate. This method involves arithmetical calculations based on the usual figures used by the voters in rating candidates according to preference.

The initial step in determining the election results is to obtain a sum for each candidate by adding the ratings given him on all of the ballots cast at the election. If a voter has neglected to express as many choices as there are candidates, the unrated candidates on his ballot are assigned a figure equal to the average of the unexpressed preferences. The next step is to determine the average sum per candidate and to declare defeated every candidate whose total is equal to or greater than this average.

After this elimination of candidates, it is necessary to record for each surviving competitor the figures representing his rating among the entire group of survivors as indicated on each ballot. For example, if a ballot is marked first choice for A, second for B, third for C, and fourth for D, and A has been eliminated, B becomes the first choice, C the second, and D the third.

A sum for every surviving candidate is then obtained as before by adding the adjusted figures. After determining the average sum per candidate, each candidate with a total equal to or greater than this average is declared defeated. This process is repeated until only two candidates remain. The final step is to ascertain which of these two is preferred by a majority of the voters.

Like the Hallett plan, the Nanson system is not readily understood by the average voter. The method of counting is complicated and requires considerable time. Up to the present, the only governmental unit known to have used it for public elections is Marquette, Michigan. In spite of the

excellence of the Hallett and Nanson systems from the standpoint of effective majority voting, the alternative vote is preferable for public elections to offices which should be filled by a majority vote. It is not only sufficiently reliable under ordinary circumstances but also comparatively easy to administer. Furthermore, the voting population experiences relatively little difficulty in comprehending its operation.

**Methods Designed to Provide Minority Representation.** For the election of councilmen and the members of other bodies which are intended to be representative in character, it usually is considered desirable to use methods of election which will enable minorities as well as the majority to obtain representation. In fact, many persons contend that the composition of a representative body should reflect as accurately as possible the divisions of opinion among the voters of a community and that each substantial group of like-minded voters should receive representation in proportion to its relative numerical strength.

According to another theory of representation, the representative character of a body of persons does not depend so much upon the presence of spokesmen for every group of like-minded voters as upon the community-mindedness of individual representatives. A council composed of persons who can be relied upon to promote the general welfare is considered to be more truly representative of the people than a body of individuals closely associated with particular political parties or interest-groups of one description or another. It is contended that the former type of council is more likely to be chosen if the method of election in use is one which does not accentuate the special interests of voters. However, adherents of this school of thought seldom favor representation of one group of like-minded voters to the exclusion of all others. Disagreement among voters concerning the community-mindedness of competing candidates is as inevitable as differences of opinion with respect to issues.

Among the cruder methods of providing representation for minorities as well as the majority are the ward plan, limited voting, and cumulative voting. All of them usually are associated with the single choice-plurality type of election. None of these plans is designed to provide proportional representation. Nor does any of them insure representation for even the strongest minorities. However, the use of these methods sometimes permits a powerful minority to elect a majority of the members of a city council. To some persons this possibility is a sufficient indication of their unreliability.

(1) **Ward System.** The ward system may be utilized in various ways. As a rule the city is divided into wards (election districts) and the voters of each ward are permitted to elect only one councilman. In some communities, however, this single member ward plan is combined with election at large of a few members of the council. Sometimes, too, the voters of a ward are allowed to choose two or more councilmen. Baltimore affords

an example. The city is divided into six districts and three councilmen are elected from each of four districts and four from each of two.

The merits and shortcomings of the ward system may be divided into two categories. One of these includes the advantages and disadvantages of the plan as a device for securing a representative council. The other consists of the good and bad consequences of ward elections from the standpoint of miscellaneous considerations, e.g., the caliber of councilmen; the character of the relations between a councilman and his constituents; and the production of a working majority in the council.

The ward system insures a geographical distribution of councilmen. Every section of the city is guaranteed representation in the city council. Unfortunately, wards are districts which more often than not are indistinguishable from one another on the basis of distinctive community interests. They usually are artificial areas rather than natural communities in the social sense.

As compared to the election of councilmen at large by the single choice-plurality or majority vote, the ward plan possesses the merit of giving minorities some chance of obtaining representation. If there be two or more political parties in a city, it is likely that each of the stronger ones will be able to win out in at least one ward and perhaps in more. The odds are against a clean sweep by one party.<sup>6</sup>

Proponents of the ward system favor it for several other reasons which have little or no bearing on the question of the representative character of the council as a whole from the standpoint of the substantial group of persons who think of representation in terms of a correspondence between the complexion of the council and the different opinion-groups into which the voters of a community happen to be divided. The advocates of the ward plan usually reject this conception of representation and subscribe to the view that each councilman, whether chosen by a district or by the entire municipal electorate, serves as a representative of the whole city and not merely of some geographical or political part thereof.

The single member ward plan is praised as a device which promotes integration among voters and normally enables one party to obtain an effective working majority of the seats in the council. Professor F. A. Hermens, a vigorous opponent of proportional representation, states the case as follows:

"For us, elections do not have the ultimate purpose of 'representation'; instead, they constitute a process of integration, an essential feature of which consists in the making of a decision directly by the voters. As long as that is the case no vote is wasted because it belongs to the minority; there simply have not been enough votes cast for its candidates to make it a majority. On the other hand, all votes have been wasted if the elections have failed to

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<sup>6</sup> Clean sweeps occur even under the ward or district plan. As indicated above the voters in each of the six districts into which Baltimore is divided elect from three to four councilmen. In 1947 the Democratic party won all of the seats. It polled 64% of the city-wide vote as compared to 36% for the Republican party.

create a legislative body which possesses a majority able and willing to cooperate for the common good."

Primary stress is placed on the importance of electing a legislative body containing a sufficiently strong majority to insure action promoting community interests without undue bickering and delay. An opposition is considered desirable, but the opposing minority should not be strong enough to block action or to force too many compromises. The ward system is looked upon as the method of election most likely to produce both a working majority composed of community-minded councilmen and a critical minority too weak to prove troublesome.

Another favorite argument of friends of the ward plan is that it creates a more intimate personal relation between the councilman and his constituents. The former knows the identity of the latter, viz., the qualified voters of his ward, and the latter know who their representative is. Each councilman can become well acquainted with the problems and needs of his relatively small constituency and each voter can readily contact his ward councilman with assurance that personal attention will be paid to his requests or complaints. So runs the argument. Opponents contend that this "happy family" picture is unrealistic. In large cities, partly because of numbers and partly because of the mobility of urban populations, the relations between the ward councilman and his constituents are on the whole impersonal. Such is the case to a lesser extent in the smaller communities. Moreover, the responsiveness of the ward councilman to the requests of his constituents usually is determined by their political affiliations. The voter who belongs to the councilman's party is more likely to receive attention than the unfortunate resident who is associated with the opposition.

Two other claims in behalf of the ward plan are that it involves a shorter ballot than election-at-large and that voters know more about the candidates who seek election. The short ballot argument is valid, but it is doubtful if voters obtain more and better information concerning competing candidates. What the ward enthusiasts have in mind is that candidates find it easier and less expensive to campaign in such a manner as to enable most voters to see, to hear, or to hear about them. However, opponents claim that newspapers devote more space to the candidacies of persons who are to be chosen by the entire municipal electorate; and that other avenues of publicity, e.g., the radio, are as available to such persons as to those who need appeal only to the voters of a ward. Of course, the expense of certain types of campaigning, such as the distribution of printed material to each voter, increases with the size of the constituency.

Objections to the ward system are fairly numerous. Perhaps the most important of them are those which stress its inadequacy as a means of obtaining councils which are representative in other than geographical respects.

The unfairness of the ward system to competing groups is attributed to

<sup>1</sup> *Democracy or Anarchy?* (Notre Dame, *The Review Politics*, 1941), p. 48, footnote 27. Professor Hermens' views will be referred to again in the section dealing with proportional representation.

the vital importance of the distribution of partisan voting strength in relation to ward boundaries. A party's city-wide total of votes is ignored in determining election results. What counts is the comparative vote polled by competing groups in particular wards. Under the single choice-plurality type of election, only the strongest party or group in a given ward can elect a representative. Voters who are associated with other groups find that their ballots have been wasted inasmuch as their votes help neither their party nor the candidates whom they favor.

Any party which commands the strongest support in a majority of the wards will win a majority of the seats in the council regardless of its voting strength throughout the entire city. Thus even a minority party may gain control of the council simply because the strength of the opposing majority is unfavorably distributed with respect to ward lines.

An equally undesirable result is the failure of powerful minorities to elect even a single councilman. This fate awaits any group whose supporters are so scattered throughout the city as not to be able to poll a majority or plurality in any ward.

Again, neither the majority nor minorities are guaranteed representation in proportion to numerical strength. Over-representation and under-representation, as well as no representation, are the usual consequences of ward elections.<sup>8</sup>

Inasmuch as the complexion of a council elected under the ward plan depends to so great an extent on the geographical distribution of voting strength, gerrymandering is advantageous in the determination of ward boundaries. The party in control of the governmental agency which fixes the size and shape of wards may gain control of the council merely by devising a ward layout which concentrates the strength of its opponents in a few wards and spreads its own in such a manner that it is more than reasonably certain of winning out in a majority of the wards. Politicians often have demonstrated their proficiency in manipulating defective election methods. The use of such methods encourages unethical tactics.

Another weakness of the ward plan from the standpoint of its effect on the representative character of an elective body is that slight changes in the comparative voting strength of competing parties or groups may produce drastic alterations in the complexion of a city council. A party which wins a substantial majority of the seats by narrow margins at one election may lose the next time by equally slim margins in all or virtually all of the wards. By losing the support of a mere handful of voters, it may be deprived of all or practically all of its representatives. Landslide elections due to such a cause hardly are desirable from the point of view of those persons who believe that the composition of a council should correspond fairly closely at all times to divisions of opinion within the municipal electorate. Election-at-large in combination with the single choice-plurality election method exhibits the same weakness.

<sup>8</sup> Election-at-large, if combined with single choice-plurality or majority election methods, is as objectionable in these respects as the ward plan.

Several objectionable consequences of the ward system remain to be considered. For one thing, ward councilmen usually evince a greater concern for ward politics and for sectional interests than for the welfare of the entire city. Their vision often is as limited as the area which they represent and their primary thought is to cater to the wishes of the ward politicians whose support is necessary if they are to be re-elected. The plane of ward politics tends to be low as well as petty, and ward elections promote the development of machines and bosses.

Another weakness of the ward plan is that the usual requirements of residence within the ward narrows the field of available candidates. A city-wide search for nominees is out of the question. Moreover, capable persons who happen to live in a ward dominated by a party other than their own are for all practical purposes denied the opportunity of serving on the city council. For this reason, as well as for others previously mentioned, the ward system tends to produce an inferior type of councilman.

Finally, the ward system is criticized on the ground that each councilman is accountable to only a fraction of the municipal electorate. The entire body of voters is denied the opportunity to exercise effective control over the council as a whole.

**(2) Limited Voting.** Under the system of limited voting, the individual voter is permitted to vote for a number of candidates smaller than the total number to be elected. For example, if three councilmen are to be chosen from a district or from the city at large, each voter is entitled to vote for no more than two candidates, and sometimes only for one. Winners are determined according to the plurality rule. The theory of the limited vote is that restriction of the voter in the manner indicated will enable minorities to secure some representation.

Actual results depend on the strictness of party discipline and on the number of candidates placed in nomination by the several competing parties. Approximately proportional representation will be secured only if the party managers are able to make an accurate estimate of the party's voting strength, if the party's candidates are restricted in number on the basis of this estimate, and if the party voters follow instructions. The voters' freedom in nominating candidates and in marking their ballots must be curtailed if the party is to secure the representation to which it is entitled in view of its voting strength. In other words, the rank and file must defer to the wishes of the party leaders. Generally speaking, the limited vote is unreliable and unsatisfactory as compared to the list and single transferable vote systems of proportional representation.

Its unreliability may be demonstrated by an example based on the following assumptions: three councilmen to be elected; each voter permitted two votes; party X supported by 6,000 voters and party Y by 5,000. If party X were to nominate four candidates and party Y only three, the latter would win all of the seats if its supporters divided their votes equally among the party's three candidates and if the votes of the former were about equally



divided among its four. On the other hand, party X would achieve a clean sweep if it were to place but three candidates in the field and divide its votes about equally among them, provided party Y were to do the same with respect to its three nominees. The number of nominees, the number and relative strength of competing parties, the manner in which each party's votes are distributed among its candidates, and the number of votes permitted each voter determine the outcome of an election under the limited voting system.

**(3) Cumulative Voting.** Cumulative voting is a system under which the voter is entitled to one vote for each seat to be filled with the privilege of giving all of his votes to one candidate or distributing them among two or more candidates as he sees fit. Thus if four councilmen are to be elected from a given district, the voter may cast four votes for one nominee, or three for one and one for another, or two for each of two candidates, or one for each of four, or two for one and one for each of two other candidates. The four polling the largest vote are declared elected.

If four seats are to be filled, any party which is sufficiently strong to poll more than one-fifth of the total vote is certain to elect a councilman if its votes are concentrated on a single candidate. It will win all of the seats if it is supported by more than four-fifths of the voters, provided, of course, that its vote is properly distributed among four candidates.

As in the case of limited voting, the outcome of the cumulative vote depends on the number of candidates per party and on the strictness of party discipline. A party which places too many or too few candidates in competition will fail to obtain the representation to which it is entitled on the basis of its numerical strength. Even with the proper number of candidates, it is essential that the party's supporters follow instructions carefully. However, it is easier to instruct voters under the cumulative than under the limited vote system.

Although the cumulative vote enables strong minorities to obtain some representation, it is not an effective means of achieving proportional representation. Cumulative voting is permitted in the election of charter boards in West Virginia.

**(4) Proportional Representation.** Proportional representation of parties and other interest-groups is best attained under either the "list" or "single transferable vote" systems of election. The former has been used extensively in continental Europe for the election of members of national and local legislative bodies, whereas the latter has been adopted on a much more limited scale, chiefly in the Irish Free State, Canada, and the United States. With occasional exceptions, e.g., the Irish Free State's national parliament, public use of the single transferable vote system is confined to the selection of members of provincial and municipal assemblies.

P. R. systems are designed to provide fair representation not only for minorities but also for the majority. The following chapter is devoted to

an explanation of these systems and to a presentation of the most significant arguments advanced for and against them.

### *Suggested Reading*

W. Anderson, *American City Government* (New York, Henry Holt & Co., 1925), Chapter XIV.

R. S. Childs, *Short-Ballot Principles* (Boston, Houghton Mifflin Co., 1911).

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D. S. Hecock, "Long Ballot Burdens Detroit," *National Municipal Review*, Vol. XXXV, No. 7, July, 1946, pp. 344-346.

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C. G. Hoag and G. H. Hallett, Jr., *Proportional Representation* (New York, The Macmillan Co., 1926), Appendix X, pp. 480-508.

R. M. Hull, "Preferential Voting and How It Works," *National Municipal Review*, Vol. I, No. 3, July, 1912, pp. 386-400.

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T. H. Reed, *Municipal Government in the United States*, rev. ed. (New York, Appleton-Century Co., 1934), Chapters XV and XVI.

T. H. Reed and P. Webbink, *Documents Illustrative of American Municipal Government* (New York, The Century Co., 1926), Part IX, Sections 81-84.

## CHAPTER XII

### PROPORTIONAL REPRESENTATION

#### *Outline*

The List System  
The Single Transferable Vote System  
Claimed Advantages of P.R.  
Claimed Disadvantages of P.R.  
The Response of P.R.'s Proponents to Its Critics  
Results of P.R. in American Cities  
Abandonments of P.R.

COMPARATIVELY FEW American cities utilize proportional representation as a means of electing their councils, but agitation for this reform continues and the outlook for more adoptions still seems promising in spite of recent abandonments by four municipalities. As of late 1948, the single transferable vote system of proportional representation (the Hare system) was in use or shortly to be used in the following municipalities: Cambridge, Lowell, Medford, Quincy, Revere, the town of Saugus, and Worcester, Massachusetts; Hopkins, Minnesota; Cincinnati, Hamilton, and Toledo, Ohio, and Wheeling, West Virginia.<sup>1</sup> The seven Massachusetts communities elect their school committees as well as their councils by P.R.

#### THE LIST SYSTEM

Although the list system of proportional representation never has been used in the United States, a brief explanation of its essential features seems advisable. This system, which presupposes partisan elections, derives its name from the requirement that each competing political party present its list of candidates for the seats in a legislative body. Every voter casts his vote for one of the lists and the assignment of seats is based on the proportion of the total vote which each party obtains. Thus, if there were 10 seats to be filled, and the Liberals were supported by 60% of the voters, the Socialists by 30%, and the Conservatives by 10%, 6 seats would be assigned to the Liberals, 3 to the Socialists, and 1 to the Conservatives.

The foregoing explanation demonstrates the controlling principle of the list system, but fails to indicate the detailed rules governing the assignment of seats to parties, the designation of winning party candidates, and the extent of discretion enjoyed by the voter in marking his ballot. Differ-

<sup>1</sup> In the autumn of 1947 P.R. was discarded by Boulder, Colorado, and New York and Long Beach, New York. A year later it was abandoned by Yonkers, New York and Coos Bay, Oregon. Other cities which at one time fell in the P.R. category are Ashtabula and Cleveland, Ohio; Sacramento, California; West Hartford, Connecticut; Kalamazoo, Michigan; and Norris, Tennessee. For current developments and accounts of P.R. elections, the student should consult the department on Proportional Representation appearing in current issues of the *National Municipal Review*.

regulations regarding these matters account for the development of several varieties of the list system.

Of the various procedures for assigning seats to competing parties, only the d'Hondt method will be described. It is designed to achieve a distribution which will result in a maximum quota of voters per elected representative. Assignment of a seat or an additional seat to a particular party is justified only if the resultant number of voters per representative exceeds that which would be obtained if the assignment were made to any other party. Each party's total vote is divided by one, two, three, four, five, and so on, and the assignment of seats is accomplished by allotting a seat to each of the largest quotients corresponding in number to the total of seats to be filled. This procedure permits allotment of the right number of seats per party in a comparatively simple manner. The d'Hondt quota is the last quotient for which an assignment is made.

List systems differ with respect to two other important features, the rule for determining the winning candidates on the several party lists and the freedom of choice enjoyed by the voter in the selection of particular candidates. Sometimes the elector may do no more than vote for a party. In that event candidates are declared elected in the order in which their names have been placed on the list by party officials. If a party is entitled to two seats, for example, the two candidates heading its list become the winners.

Most list systems permit balloting not only for a party but also for individual candidates. As a rule, however, the voter's choice of particular candidates is *confined to the list* which he decides to support. The extent of his discretion in making selections within the list depends upon the method of voting which is prescribed. Among the systems in use are the single non-transferable vote, the single transferable vote, cumulative voting, and limited voting. Under most of these methods the plurality rule is followed in determining the winning candidates. However, with the single transferable vote within the list, a list quota is calculated and candidates obtaining the required quota of votes are declared elected.

The various types of list system have proved reasonably satisfactory in providing proportional representation for competing political parties, but all of them are open to the objection that voters are afforded little or no opportunity to exercise genuine freedom of choice in the selection of particular candidates. This defect is due to the restrictions on expression of preferences by the voters. Even if more than a first choice may be indicated, the preferential rating of candidates is confined within the party list. Generally speaking, the party officials who prepare the party's list of nominees exercise a controlling influence in determining which persons are to represent the party in the legislative assembly. The extent of this influence varies with the degree of discretion exercisable by the voter in the support of particular candidates.

One feature of the list system, its partisan character, is particularly objectionable from the standpoint of its use in selecting members of councils in American cities. The non-partisan movement in cities of this country

is based on the conviction that the drawing of national party lines in local elections is an obstacle to better municipal government because national and state rather than local issues are too likely to determine the outcome of city elections. If this conviction be sound, it would be unwise to adopt a method of election, such as the list system, which presupposes the existence of parties. There would be no reason for objecting to the list system on this ground if parties were genuinely municipal in character.

#### THE SINGLE TRANSFERABLE VOTE SYSTEM

The single transferable vote system of proportional representation, often referred to as the Hare plan, differs from the list system in several important respects. There are no party lists of candidates, voters may rate all candidates in the order of preference, and the method of determining the winning nominees involves the use of a quota, the transfer of surplus ballots, and the transfer of ballots of defeated candidates.

The names of candidates are placed on the P.R. ballot by petition. Any qualified person desiring to compete for election need only obtain the number of valid signatures required by law. Party support is unnecessary.

The ballot is simple in form in that the names of all nominees are printed in a vertical column with appropriate space to the right or left for the expression of preferences by the voters. Although the non-partisan ballot is favored by P.R. advocates, provision may be made, as was the case in the city of New York, for indication of the party affiliation of each candidate.

The voter enjoys the privilege of rating all of the competing candidates in the order of his preference. Presumably this right will be exercised to the fullest extent only if an opinion actually has been formed concerning the relative merits of all competitors. Preferences are registered by the use of numerals, 1 indicating a first choice, 2 a second, 3 a third, and so on. Marking the ballot in this way is a simple task which every voter should be capable of performing without a slip once he has decided on the qualifications of the various candidates. The chief problem for the voter seems to be the formation of sound judgments on the basis of the meagre and more or less unreliable information which ordinarily is available with respect to contending nominees, especially if these be large in number.

To be elected, candidates must poll the required quota of votes. The quota most commonly used for public elections is the Droop quota. It is ascertained by dividing the total number of valid ballots (as determined by the first choice distribution) by one more than the number of seats to be filled and adding one to the quotient, fractions being disregarded. For example, if five councilmen were to be elected and 100,000 valid ballots were cast, the divisor would be 6, the quotient 16,666  $\frac{2}{3}$ , and the quota 16,667.

New York City used a uniform or fixed quota which, by charter provision, was 75,000.<sup>2</sup> With a fixed quota, the size of the council depends on the total valid vote cast at each election. Consequently, the number of council-

<sup>2</sup>Yonkers once used a fixed quota but shifted to the Droop quota in 1943.

men usually varies from election to election. This plan is deemed particularly advantageous if councilmen are chosen by districts or boroughs, as formerly in New York, rather than from the city at large. The advantage lies in the automatic apportionment of councilmen among the districts on the basis of the vote cast at each election. District boundaries remain fixed and gerrymandering is prevented.

Other advantages claimed for the fixed quota include the following: voting is encouraged because district representation increases with the size of the vote; voters who feel that they cannot obtain satisfactory representation may refrain from voting with the knowledge that by so doing the representation of their district will not be as large as it might otherwise be; and councilmen are placed on an equal footing by reason of the fact that all will have received the same quota irrespective of the district from which elected.

The first step in ascertaining the result of the election is to distribute ballots according to indicated first choices. After the electoral quota has been determined, every candidate obtaining a first choice vote equal to or greater than this quota is declared elected. If any seats remain unfilled, as almost invariably is the case, the next step is to distribute the surplus ballots of those candidates whose total vote exceeded the quota. Otherwise these surplus votes would be wasted.

The most practicable plan for selecting surplus ballots for distribution is to choose them by chance. In public elections involving a comparatively large vote, the likelihood of error in the eventual outcome of the election is negligible. Consequently, the simplicity of selection at random makes the adoption of this procedure advisable. Certain safeguards against unfair selection have been devised. One plan is to choose the same number of ballots from the total received by the "surplus" candidate in each of the several voting precincts. Another, used in Cincinnati, involves the serial numbering of each candidate's first choice ballots and the selection of every  $n$ th ballot,  $n$  being the quotient obtained by dividing the candidate's total vote by his surplus. For example, if candidate A were to receive 6,000 first choice votes, if the electoral quota were 5,000 and the surplus 1,000, every sixth ballot would be chosen for distribution from the total of 6,000 ballots assigned to A. Surplus ballots selected by chance are distributed among continuing candidates, i.e., those who have neither been elected nor defeated, according to the next available preference marked on each by the voter.

More "exact" methods of distributing surplus ballots may be utilized if it is desired to reduce or eliminate the element of chance. Only one of these plans will be described. It was used in Boulder, Colorado, and Long Beach, New York, until the abandonment of P.R. by these cities in 1947. All of the ballots of a candidate elected with a surplus are examined to determine the total number on which each continuing candidate is the next preference. Following this classification, the transfer of the surplus is accomplished by selecting the appropriate number of ballots from each continuing candidate's total. The proper number to be selected depends on the ratio

of the surplus to the total vote polled by the nominee whose surplus is being distributed. If this ratio were  $\frac{1}{4}$ , and if a given continuing candidate were the next available preference on 20 ballots, five of these would be transferred to him. This method merely eliminates the element of chance in the original distribution of surplus ballots. It obviously is more complicated than the plan of outright chance selection previously described.

After surplus ballots have been distributed, totals are determined and any candidates attaining the required quota are declared elected. If any seats remain to be filled, and such usually is the case, the next step is to declare the lowest candidate defeated and to distribute his ballots among the continuing candidates according to the next available preference indicated on each. Totals are then determined and candidates obtaining the quota are proclaimed elected. This process of eliminating the lowest candidate at successive stages of the count, transferring ballots, and determining totals is continued until the required number of candidates achieve the quota or until the number of remaining candidates equals the number of unfilled seats.

Disposition of either surplus ballots or those of defeated candidates is governed by the expressed preferences of the voters. A ballot marked "first choice" for a defeated candidate is transferred to the indicated "second choice," provided the second choice candidate has neither been elected nor defeated. If such happens to be the case, the "third choice" controls the transfer unless that choice no longer is available, in which event the "fourth choice" is considered, and so on. Since the order of preference expressed by the voter determines the transfer of his ballot, and since any particular preference is never considered unless preceding preferences have been elected or defeated, the voter need not fear that the rating of candidates in conformity to his real opinion will injure the chances of election of his favorite candidates. After expressed preferences on a ballot have been exhausted, the ballot no longer can be transferred and the voter's opportunity to influence the outcome of the election is ended. Consequently, a full expression of the voter's preferences is advantageous.

The several successive steps involved in determining the results of a P.R. election may be summarized as follows: (1) distribution of ballots according to first choices and determination of totals; (2) calculation of the quota required for election, unless a "fixed" quota is used; (3) transfer of surplus ballots, if any, according to next available preferences, and determination of totals; (4) the successive elimination of lowest candidates, transfer of their ballots according to next available preferences, and ascertainment of totals—a process which continues until the required number of candidates has been elected.

The third and fourth steps are taken only if seats remain unfilled after determination of the first choice support received by each candidate. For all practical purposes these steps may be considered to be part of the regular procedure because it is extremely unlikely that a sufficient number of nominees will obtain the quota on the basis of the first choice count.

## CLAIMED ADVANTAGES OF P.R.

The following presentation of claimed advantages and disadvantages has been prepared with the single transferable vote system of P.R. in mind. It is unlikely that American cities will give consideration to the list system. However, many of the arguments are pertinent to either plan.

Probably the most important advantage claimed for the Hare system is that it results in representative councils, i.e., councils which reflect with approximate accuracy<sup>8</sup> the division of political opinion within the body of voters participating in an election. Representation in proportion to comparative voting strength is provided for the *majority* as well as for *minorities*, and for political parties as well as for groups of unorganized but like-minded voters. Neither over-representation nor under-representation of groups, except to the negligible extent attributable to the limited size of councils and to the fact that a man cannot be divided into proportional parts, occurs when councils are elected by P.R.

If any group succeeds in winning the support of a majority of the voters it will be able to dominate the council. Even so, it will be faced by an opposition representative of the minority. If no group is strong enough to obtain a council majority, council decisions on particular issues nevertheless will be made by majorities composed of minority representatives who, collectively, represent a majority of the voters. Rule by the majority, a principle of democracy, does not require domination of the council by the spokesmen of a single group.

Another aspect of the claim that P.R. permits true representation is that the rank and file of any given group are able to choose the representatives whom they desire irrespective of the wishes of leaders who might strive to monopolize selection of the group's official spokesmen. Proportional representation *within the party or group* is considered just as important as proportional representation among groups.

It has often been observed that under prevailing methods of nomination and election the men who control a party's organization usually are successful in dictating the party's choice of representatives. For example, a minority of Republicans can bring about the election of Republicans distasteful to the rank and file, even though preferable to the candidates of competing parties. The single transferable vote system of P.R. constitutes a safeguard against this practice. It enables the members of a party, if they so desire, to break the control of organization leaders or machine politicians.

One of the chief reasons for the effectiveness of the Hare system in the foregoing respect lies in the method of nomination of candidates, viz., by petition. Primaries are eliminated. Most voters show little interest in primaries, but as Ed Flynn, Bronx Democratic leader, remarks: ". . . that is exactly like locking the barn door after the horse has been stolen. The one

<sup>8</sup> The degree of accuracy depends largely on the size of the council in relation to the total vote cast at the election. This relationship determines the minimum numerical strength which is essential for group representation. Both organized and unorganized groups of like-minded voters are able to secure as many representatives as the number of times the required quota is contained in the vote polled by each group.



and only way that political organizations can be cleaned up is at primary time, not at election time."<sup>4</sup> P.R. serves as a "cleaning up" device because organization leaders eventually realize that if they sponsor candidates objectionable to the members of their parties, the latter can name others by petition and elect them with less difficulty than under traditional methods of nomination and election. Under P.R., election time really becomes clean-up time.

Under the Hare system, the voters of a party or group may, with safety, take full advantage of the greater freedom which they enjoy in the nomination of candidates. Any number may be placed in competition without the risk of splitting the party's vote to so great an extent as to insure victory for opposition groups. If the voters of a party rank its candidates higher than those of its competitors, the party will receive representation in proportion to its relative numerical strength. The transfer of ballots according to expressed preferences eventually will concentrate the party's vote on the number of nominees it is entitled to elect. Such is not the case with traditional methods of election. Even a party polling a majority of the total vote may find itself under-represented or without representation if its voting strength has been dissipated among too many candidates.

The Hare system enables the voter to register his real opinion concerning the merits of competing candidates without danger that in so doing he may aid the cause of nominees whom he considers undesirable. This risk is great under the single choice-plurality system because a vote cast for a hopeless first choice cannot be transferred to other candidates preferred by the voter to those nominees most likely to win by a plurality. Consequently, the voter may use his single choice to support a candidate who is not his actual first preference but is looked upon as less objectionable than any other candidate who stands a good chance of winning.

P.R. reduces the number of wasted votes to a minimum because of the transfer of ballots according to expressed preferences. The only properly marked ballots which prove ineffective are those assigned to the candidates who meet defeat at the final stage of the count.<sup>5</sup> If ballots are rendered ineffective because of mismarking or failure to express enough preferences, the fault lies entirely with the voter. Under the usual single choice-plurality system of election, the only effective ballots are those cast by the voters constituting the numerically strongest group. Electors whose first choice candidates prove to be losers might just as well have refrained from voting had they been able to anticipate the result with certainty.

P.R. prevents sudden and drastic changes in the political complexion of city councils merely because of shifts in the attitudes of comparatively small groups of voters. Variations in public opinion are reflected in the personnel of the council only to the extent that they actually occur. Standard election methods often give the strongest party a monopoly or near monopoly of seats, but the opposition may be swept into power suddenly if the allegiance of a

<sup>4</sup>E. J. Flynn, *You're The Boss* (New York, The Viking Press, 1947), p. 143.

<sup>5</sup>The proportion of effective ballots in P.R. elections normally runs as high as from 80% to 90%.

handful of voters is lost. "Landslide" elections can occur under P.R. only if overwhelming changes in public sentiment take place.

Another asserted advantage is that the constituencies of councilmen are unanimous rather than divided. Under the single-member ward plan, a councilman represents the entire ward from which he was elected, including the voters who opposed him as well as those who gave him their support, whereas under P.R. the constituency of a councilman consists of the voters whose ballots make up his quota. A P.R. constituency is composed of voters who are in agreement concerning the merits of a candidate and the policies he favors. Voters who think alike are not prevented from pooling their political resources merely because they happen to live in different wards. A P.R. councilman can continue in office as long as he is able to retain the support of a quota of voters. Consequently, he need not bow to the dictates of vote-controlling party managers whose views on public issues may differ from his own. Unanimous constituencies result in greater freedom for both voters and individual councilmen.

P.R. also is favored for several other reasons. It eliminates gerrymandering. The candidacy of better men is encouraged and the caliber of council personnel is raised. Independents stand a good chance of being elected, and in order to survive competition, it is argued, the nominees sponsored by party organizations must be of a higher type. Fraudulent election practices are virtually eliminated because of the obstacles to successful manipulation. Better feeling is said to be manifested in election campaigns as a consequence of the general realization that P.R. is fair in its operation to both individual candidates and competing groups of voters. Most of these claimed merits are attributed to the advantageous features previously considered.

#### CLAIMED DISADVANTAGES OF P.R.

The opponents of P.R. condemn it for a variety of reasons. Most of these may be assigned to two major categories: (1) asserted adverse effects on the party system of government, and (2) disadvantages affecting candidates and voters. As the reader will notice, the foes of P.R. consider its claimed merits to be its primary weaknesses. They insist that the type of "representative" council which P.R. admittedly produces will have evil effects on community spirit and on the operation of city governments which are intended to be democratic in character.

P.R. is invariably opposed on the ground that it eventually destroys the two-party system under which one of two major parties usually attains a safe working-majority in the city council. This argument is based on the conviction that P.R. seriously reduces the strength of major parties by encouraging the formation of numerous small parties and by dividing the voters into factions along economic, national, racial, religious, and other lines. Such a development is attributed to the opportunities for representation which the Hare system affords.

P.R. is said to offer a standing invitation to groups of all types to intensify their differences by dragging them into the political arena. A sound election

system, so it is claimed, promotes the creation of unity out of diversity by causing voters to think of "what unites them" rather than of "what separates them." A majority or plurality election system is sound because it unites. P.R. is charged with having the opposite effect, viz., that it divides.

The anticipated breakdown of the two-party system is said be attended by a number of evils. Without domination of council by one party, effective government is claimed to be unattainable. The bargaining power of minorities is greatly increased and the presence of extremists, cranks, and faddists promotes discord in council deliberations and prevents the reaching of sound decisions on matters of vital importance. At best, policy determination becomes a difficult process of compromise between the representatives of special interests who are indifferent to the common welfare and uncompromising in their attitudes. The change in party structure which is brought about by P.R. sooner or later produces deadlocks in the council which prove costly to the community. Ill feeling and wrangling among single-interest groups and narrow-minded, obstinate councilmen destroy the government's capacity for action.

Another claimed disadvantage of P.R. is that party responsibility is destroyed. This claim has two aspects. First, the destruction of party responsibility is said to occur because no single party can be held to answer for results if council majorities are composed of coalitions. None of the many small parties which P.R. presumably produces is ever placed in the position of being solely responsible for what the government does or fails to do. Secondly, minority groups *within a party*, by securing representation in the legislative body, may block the efforts of the party's leaders to carry its program into effect. Unless united action is forthcoming, it is unfair to hold the majority party responsible for the decisions which the council makes. Nominal control of the council means effective control only if the members of the party support its leaders and present a united front to the opposition.

Still another complaint against P.R. is that it brings about a deterioration in the quality of councilmen and party leaders. This view is based on the conviction that men who need win the support of only a relatively small number of voters, i.e., a P.R. quota, do not measure up to those who survive competition for the backing of a majority or plurality. The former are likely to be narrow in outlook, indifferent to community welfare, and mediocre or weak in so far as fighting qualities are concerned.

P.R. is charged with promoting radicalism. Extremists are said to thrive on the discontent which P.R. fosters and to become more and more unwilling to support policies of moderation as long as they are assured representation in the legislative body. In contrast, according to Professor Hermens, "the blow dealt to Radicals by the majority system is so severe that the evil is cured once and for all."<sup>6</sup>

The opponents of P.R. also contend that it affects candidates and voters adversely in a variety of ways. Localities are deprived of representation; candidates experience difficulty in placing themselves in contact with voters

<sup>6</sup> *Democracy or Anarchy?* (Notre Dame, *The Review of Politics*, 1941), p. 22.

and the latter in acquiring information about the former; the personal relationship between representatives and constituents is broken; and the rights of individual voters are infringed. The first three of these contentions are advanced by persons who favor the single-member ward plan for the selection of councilmen. The usual supporting reasons were presented in the preceding chapter.

Infringement of the rights of individual voters is said to occur because under P.R. the ballot of each voter can prove effective in electing but one councilman. It is argued that the voter is entitled as a matter of right to as many votes as there are seats to be filled from his district. One seat, one vote; five seats, five votes. In other words, each voter should be given the privilege of obtaining as many representatives as he can get in cooperation with other voters.

Finally, P.R. is opposed on the ground of complexity. The system is difficult to understand, the preferential ballot is hard to vote, the counting process is complicated and confusing, the count requires too much time, and the expense is too great. Many voters probably lose confidence in an election system if they fail to comprehend all of its phases.

Evidence of the difficulty experienced in marking the P.R. ballot is afforded by the proportion of invalid ballots which usually runs from 4 to 8% in American cities. Invalid ballots in New York's council elections averaged about 12%. In the 1929 election in Boulder, Colorado, the proportion of blank and invalid ballots ran as high as 27.4%, but the proportion of invalid ballots in this city from 1931 to 1947 inclusive averaged slightly under 5%. Invalid ballots in the 11th P.R. election (1947) in Hamilton, Ohio, amounted to only 2.7% of the total number which were marked.

More time is required for the count than under traditional election methods. Among the determining factors are the number of canvassers, the quality of their organization and training, the number of candidates, and the size of the vote. A small community like Boulder with a total vote under 2,000 is able to complete the count in from three to four hours,<sup>7</sup> but larger communities like Cincinnati and Toledo normally require about six or seven days. The former of these two cities polls a vote in the neighborhood of 150,000 ballots; the latter about one-half to two-thirds as many. In 1937, the borough of Manhattan required a "long count" of eighteen days with about 500,000 ballots,<sup>8</sup> but in 1939 the number of days was reduced to five for approximately 400,000 ballots. Canvassers were paid by the day in 1937 and by the job in 1939. In subsequent elections the borough with the heaviest vote, Brooklyn, completed the count in from seven to nine days. The longer time necessarily required for P.R. counts annoys people who are accustomed to speedy election returns. It also adds to election expenses.

<sup>7</sup> In 1947, the Hamilton vote was 16,682, the quota 2,086, and seven councilmen were elected. The count was completed in 22 hours' working time and 48 hours after the closing of the polls.

<sup>8</sup> In the other boroughs in 1937, the lapse of time in calendar days from election day to completion of the count was as follows: Richmond 10; Queens 21; Brooklyn 22; and the Bronx 25. Legal difficulties and delays in getting started accounted in part for the time consumed.

## THE RESPONSE OF P.R.'s PROPONENTS TO ITS CRITICS

The ways in which the friends of P.R. respond to the arguments of its opponents deserve careful consideration. A proposal for departure from traditional techniques of election usually arouses such bitter opposition that the new plan is placed on the defensive almost as soon as its sponsors attempt to secure its adoption.

In response to the charge that P.R. destroys the two-party system, proponents deny that it is the cause of the splitting-up of parties. The political histories of many countries, e.g., France and Italy, are cited to show that multiple party systems develop in spite of the use of majority or plurality election methods. Basically, a multiplicity of parties is the result of economic, political, religious, psychical, and other forces operative in communities. P.R. merely enables existing groups of like-minded voters to obtain the representation to which they are entitled by virtue of their voting strength.

The contention that P.R. divides whereas majority and plurality election methods unite is met with the response that denial of proper representation is doomed to failure as a means of creating unity out of diversity. Disappearance of consensus concerning the desirability of a given way of life is attributable to social conditions which develop in spite of election techniques.

Special interest-groups are inevitable in any community and in one way or another they manage to influence governmental action. Their spokesmen usually engage in lobbying activities and often find their way into legislative bodies and other branches of government. Racial, national, religious, economic, and other considerations affect the nomination and election of candidates under any election system, provided the voters feel strongly enough about matters of this kind. P.R. has the virtue of bringing such forces into the open and of preventing either the over- or under-representation of the interest-groups or parties into which the electorate is divided. The appearance of unity means little if its substance is lacking.

Whether or not conflicting interests within a community produce serious political crises depends on the nature and importance of the issues which arise. Majority and plurality election methods failed to avert civil war in this country. P.R.'s foes would consider it absurd to condemn them on this account. To the friends of P.R. it seems equally ridiculous to consign P.R. to perdition because of the downfall of democracy in certain European countries which utilized the list system.

As for the argument that P.R. destroys majority rule and thereby renders the government incapable of effective action, the supporters of P.R. claim that majority rule is realized whenever the decisions of a legislative body are supported by a majority of its members representing more than half of the voters. It is immaterial whether the majority consists of the members of a single party or the representatives of a number of minority groups. Nor are changing majorities with respect to different issues in conflict with the principle of majority government. Moreover, a party or group which actually is favored by more than half of the voters will win a majority of the seats under P.R.

If there be no such party, the government's capacity for action is not necessarily destroyed. The assumption that representatives of special interests or of minority parties normally disregard the general welfare is unwarranted. Usually, compromise is attainable with respect to highly controversial measures, and compromise is a characteristic feature of the democratic process. It takes place either inside or outside the legislature, regardless of the nature of the party system or the method of election. If uncompromising attitudes lead to inaction on the part of a council, the voters may remedy the situation at the next election if they so desire.

If such attitudes prevail within the community, however, even a council dominated by one party will find itself in trouble. It may reach a decision with apparent ease without really having solved the problem before it. Experience has demonstrated that policies which are strongly opposed by large groups in a community seldom prove enforceable. Any government's capacity for effective action is ultimately determined by the degree of public satisfaction which its policies generate. In some situations inaction is preferable to action.

The opponents of P.R. really are afraid to give free rein to the forces of democracy. Their demand for more action and fewer words has a familiar sound. They favor *democracy within limits*. The danger that democracy may destroy itself is slight in any community which is firmly devoted to the democratic tradition.

The argument that P.R. promotes radicalism is looked upon as another demonstration of the tendency of opponents to place the cart before the horse. Radical movements are the consequence of dissatisfaction with prevailing ways of life. Placement of the blame on election methods is evidence of superficial diagnosis. If anything, unfair methods which deny proper representation add to rather than allay discontent.

To the charge that P.R. destroys party responsibility because of the probable election of representatives unwilling to support a party's leaders, P.R.'s supporters reply that the foundation of genuine party responsibility is responsible party leadership. P.R. enables the rank and file of a party to obtain the type of leadership which they desire. Dissenting members, instead of abandoning the party because of dissatisfaction with its leadership, are given the opportunity to work effectively for changes in the party program which will strengthen rather than weaken the bonds of union.

As for the contention that party responsibility means little unless one party possesses a majority of seats in the legislature, friends of P.R. point out that any party which is favored by a majority of the voters will win control under P.R. If there be no such party, the majorities by which decisions are reached will be composed of the representatives of two or more parties. In that event these parties can be held to answer for their actions. The voters have ample opportunity to obtain the type of representation they desire.

Giving the strongest minority party a majority of the seats for the sake of placing responsibility on but one party fails to provide voters with an

effective remedy if their only alternative is to vote into power another minority with a different program which nevertheless is objectionable to a majority of the voters. Under such circumstances one-party responsibility is maintained only by sacrificing genuine majority rule.

Some of the criticisms presented by persons who favor the single-member ward plan stress the adverse effects of P.R. on candidates and voters with respect to local representation, campaigning and information about candidates, and relationships between representatives and constituents. P.R. defenders assert that voters may obtain local representation if they want it. All that is needed is a quota of like-minded voters in any neighborhood. Improved methods of publicity simplify the candidate's task of reaching the voter and large constituencies are actually no more difficult to handle in this respect than small ones.

So far as the voter's problem is concerned, much depends on the number of candidates and the sources of information which are available. The voter need only rate the candidates he knows and if he expresses four or five preferences his ballot usually proves effective. Ordinarily, he can obtain sufficient information about a larger number of candidates if he exerts a little effort along this line.

The argument that closer contacts exist between ward councilmen and their constituents is based on the smaller size of constituencies and on the fact that the voters can identify their councilman. In answer, the advocates of P.R. contend: first, that close contact is not only a poor substitute for proper representation, but also more imaginary than real for most voters in a ward; and, second, that the P.R. voter knows the preferential rating given by him to the several members of the council even though he may remain unaware of the particular candidate whom his ballot helped to elect.

Advocates of P.R. deny that the rights of individual voters are infringed because a voter's ballot can aid the election of but one representative. They call attention to the fact that under single choice-plurality or majority voting only the strongest group of voters obtains representation. A system which leaves large numbers of voters without representation infringes the rights of voters to a far greater extent than a method of election which insures representation for all groups strong enough to poll a quota of votes. It is better to adopt a system which gives nearly all voters one effective ballot than to adhere to a plan under which none of several votes will prove effective for a substantial proportion of voters, perhaps even a majority.

P.R.'s friends have an answer for each of the specific phases of the general charge that the system is too complex. They concede that some voters may fail to comprehend every feature of the Hare plan, but stress the point that the sole task of the voter is to mark his ballot in such a manner as to indicate the order of his preferences among candidates. Any normal adult citizen should be able to do so without particular difficulty. The fairly low percentage of spoiled ballots in P.R. elections is cited in support of this claim.

Again, the counting process can be understood readily enough by persons of average intelligence who are willing to expend the necessary effort. The

use of a central counting staff reduces the number of individuals who require special instructions. Precinct officials need do no more than sort ballots according to first choices, and in some cities, for instance, Cincinnati, even that work is done by the central staff. More time is required for the count than under traditional election methods, but there are no urgent reasons why final results should be known to the public on the day following an election.

The cost of counting exceeds expenditures for this purpose in connection with standard election techniques. However, the cost is not excessive, and, due to the elimination of primary elections, a net saving results unless primaries must be conducted because of elections to other offices.

#### RESULTS OF P.R. IN AMERICAN CITIES

Opinion is divided concerning the consequences of P.R. in the American cities which have given it a trial. Generally speaking, its friends have been very well satisfied with the results, whereas its enemies have insisted that its effects have proved to be undesirable. On the basis of experience to date, the writer believes that the weight of evidence supports the claims of its proponents.

Analysis of elections in P.R. cities shows that representative councils have been chosen. New York results will be used for illustrative purposes. Under the single-member district plan in combination with the single choice-plurality system, the Democratic party, which normally polled a vote ranging from about 55% to 65% of the total, regularly managed to win from 75% to 98% of the seats in the Board of Aldermen. In 1931 it won 98.5% of the seats; in 1933 and 1935, 95.5%. Following the adoption of P.R., the Democratic party's proportion of votes and council seats was as follows: 1937—votes, 47%, seats, 50%; 1939—votes, 60%, seats, 67%; 1941—votes, 61%, seats, 65%; 1943—votes, 57%, seats, 59%; and 1945—votes, 59%, seats, 61%.

In each of these years the remaining seats were distributed among the minority parties constituting the opposition in approximate proportion to their voting strength. The Communist party was able to elect one councilman out of 26 in 1941, two out of 17 in 1943, and two out of 23 in 1945. P.R. elections in other cities have produced councils in which equally fair representation was obtained by competing parties and groups.

In most P.R. cities, as in Cincinnati, Hamilton, Wheeling, and Yonkers, the power of entrenched political machines has been challenged with success. For example, the City Charter Committee of Cincinnati won control of the council at the first election in 1925 and retained it until 1933. The next three elections resulted in a 4-4-1 division of the council of nine and the 1941 election placed the Republicans in control for the first time in 16 years. They remained in control until 1947 when the Charter Committee again won a majority. In several cities, e.g., New York, after the first election, and Cleveland, the dominant party organizations maintained their grip on the council, but were faced by a vigorous opposition of minority parties and



independents. These experiences demonstrate that established political machines remain in power under P.R. only if a majority of the voters back them.

This fact probably accounts for the persistent opposition of "organization" politicians to P.R. They no longer can dominate the political scene merely by controlling a comparatively small proportion of votes. Political parties of a local character, such as the City Charter Committee of Cincinnati and the former City Manager Leagues of Yonkers and Toledo, have been able to compete successfully with the local organizations of the national parties, with the result that the latter have paid more heed to the wishes of the rank and file and to the interests of the public.

The record of achievement of P.R. councils compares favorably with that of their predecessors. Generally speaking, paralyzing deadlocks have failed to develop even in those instances in which no single group or party possessed a council majority. The outstanding case of a stalemate is afforded by the New York council elected in 1937, especially in connection with its effort to organize itself, but no comparable situation has developed in other P.R. communities.

Although three out of 12 elections in Cincinnati brought forth a 4-4-1 division, the councils in question functioned effectively. Professor Hermens, an arch foe of P.R., recognizes the improvement of standards of government in the cities which he surveyed, but insists that the causes were the manager plan and/or civic awakenings rather than P.R. He asserts, without proof, that P.R. prevented a more substantial improvement. The causes to which he gives credit undoubtedly were important.

However, if P.R. councils were as great a liability as he considers them to be, it is doubtful if any betterment would have occurred. Indeed, if it had not been for P.R., the forces for good government might not have been able to take advantage of the civic awakenings to which he refers. P.R. enabled them either to gain control of the council or to obtain adequate representation.

Competent observers credit proportional representation with having played an important part in the continued success of the manager plan in Cincinnati and other cities. Nevertheless, P.R. is by no means an automatic cure for misgovernment. Citizens who want good government must organize and work for it continuously, as has the City Charter Committee of Cincinnati. P.R. is merely an effective means through which such citizen groups can attain their objective, provided that other factors contributing to good government develop within a community.

The fear that P.R. will produce councils composed of extremists, radicals, and the representatives of national, racial, and religious groups remains unrealized. Although such groups have succeeded in electing some councilmen, they never have gained control of any P.R. council. Nor have they been over-represented. It is doubtful whether P.R. has caused a more frequent raising of racial and religious issues than other methods of election.

Comparison of the quality of councilmen before and after P.R. presents difficulties because the subjective factor looms so large in the appraisal of

persons and their performances. A few observations are in order. For one thing, many councilmen elected before the adoption of P.R. have been able to retain their seats. On the other hand, a substantial number of individuals of unquestioned ability, e.g., former Professor Hatton in Cleveland and Mrs. Welty in Yonkers, not likely to have been elected under traditional methods, have become councilmen under P.R. At the same time P.R., like other systems, has resulted in the choice of a few persons generally looked upon as undesirables.

An examination of the appraisals of council personnel made by local observers following P.R. elections reveals differences of opinion. So much depends on the status of the appraiser—whether friend or foe. A conservative conclusion which seems warranted by available evidence is that the caliber of individual P.R. councilmen is at least as good as, and probably better than, that of members chosen by other methods.

The experiences of American cities with councils elected at large or by districts in combination with single choice-plurality election methods have proved unfortunate on many occasions. These methods undoubtedly have enabled the forces in opposition to good government to maintain themselves in power for long periods of time without the sincere support of a majority of the voters. P.R. has made it easier for the people to start house-cleaning operations by electing a satisfactory council. Whether or not they always have done so is another question.

It is highly desirable, however, that the voters be given the opportunity by removing election methods which have proved to be troublesome if not insurmountable barriers to an effective expression of the popular will. Boss Flynn of the Bronx advises voters to get off their high horses and play an active part in practical politics.<sup>9</sup> The advice is sound. P.R. helps them attain whatever objectives they have in mind.

#### ABANDONMENTS OF P.R.

Of the 23 American municipalities which have adopted the Hare system, eleven no longer use it. The plan was discarded by necessity, rather than by choice, in four cases. Kalamazoo, Michigan, and Sacramento, California, were forced to give up the system because of adverse court decisions on the question of constitutionality. In the case of West Hartford, Connecticut, the state legislature enacted a law prohibiting the use of a preferential or "so-called proportional" ballot in any election. This action was taken by the controlling Republican organization largely because a coalition of Democrats and independent Republicans in the town council had prevented adoption of some of its plans. Elimination of Norris, Tennessee, from the list of P.R. communities resulted from discontinuance of the existence of this T.V.A. town as a separately organized community.

The abandonment of proportional representation in Cleveland occurred without a direct vote on the question. After surviving several earlier attacks, P.R. was abolished in 1931 when the voters approved a new mayor-council

<sup>9</sup> E. J. Flynn, *op. cit.*, p. 233.

charter providing for the election of councilmen by wards. Since the proposed charter had to be accepted or rejected as a whole, the vote did not signify a direct repudiation of P.R. The outcome has been attributed to depression psychology, a hope for political jobs on the part of many unemployed, and the mistaken belief of many voters that the existing charter was responsible for failure to attain a high standard of government in Cleveland.

Ashtabula adopted P.R. in 1915 and discarded it in 1929. This case was the first in which rejection was the result of a direct vote on the proposition without involvement of other issues. In 1920 and again in 1926, the electorate had voted to retain P.R., but in 1929 the desire to get rid of an obstructive minority culminated in an adverse vote.

In 1947 P.R. was eliminated by direct vote in New York, Long Beach, and Boulder. Yonkers and Coos Bay discarded P.R. in the same way late in 1948. The downfall in New York was brought about principally by organization politicians and by persons who became alarmed because of the presence of two Communists and two American Laborites on the council. As stated editorially in the *New York Herald Tribune*, "The combination of the good people of the city who dislike Communists and the self-interested drive of organization party leaders has brought the defeat of proportional representation. The politicians have never liked a system which undermines their influence on the choice of candidates to the city council."<sup>10</sup> The action of the voters of Long Beach, a community located within the New York metropolitan area, is attributed to the influence of hostile New York City newspapers and to local dissatisfaction with the conduct of members of the first P.R. council which was elected in 1945. As for Yonkers, the chief reason for its recent action probably was the persistent opposition of machine politicians and their supporters. Boulder's case is rather interesting because this small community was the second in the United States to adopt P.R. and had used the system for 30 years. Three previous attempts to oust P.R. had failed but the 1947 effort was successful. Repeal is reported to be due to the failure of P.R.'s supporters to organize for its defense and to educate the current crop of voters concerning its significance.<sup>11</sup>

If opponents of P.R. are unable to prevent its adoption, they often attack it in the courts on constitutional grounds. In California and Michigan, such tactics met with success. The principal argument is based on a provision which is found in most state constitutions, viz., every qualified voter is guaranteed the right to vote "for all officers," or "at all elections," or "at any election."

A study of the history of provisions of this type indicates that their purpose was to confer equal privileges rather than to prescribe particular methods of election. However, the foes of P.R. contend that these guarantees mean that each voter is entitled to a vote for each office to be filled and that P.R. is unconstitutional because it gives the voter only one effective vote even though he may express an unrestricted number of preferences. The California court

<sup>10</sup> Quoted in G. H. Hallett, Jr., and W. R. Woodward, "Proportional Representation," *National Municipal Review*, Vol. XXXVI, No. 11, December, 1947, p. 649.

<sup>11</sup> *Ibid.*, p. 651.

accepted this interpretation of "the right to vote at all elections."<sup>12</sup> So did the Michigan Supreme Court in determining the meaning of "the right to vote at any election."<sup>13</sup>

The reasoning of the courts in these cases seems decidedly strained, especially because in both states, as in all others, the state legislatures frequently have provided for the selection of councilmen by wards. Authority to do so is conceded, but under the ward system the voter is definitely prevented from casting a vote for each office to be filled. Since this is accomplished by artificial geographical restrictions, it seems that no right is infringed.

The constitutionality of P.R. was upheld by the New York Court of Appeals in 1937 in a decision which rejected the following contentions: (1) that the right to vote for all elective officers was infringed; (2) that a voter must be given the right to have his vote counted at all times and under all conditions for the candidate for whom he voted as his first and only choice, irrespective of the fact that this candidate may have been elected before his ballot was reached, and (3) that it is illegal to have the number of councilmen depend on the number of votes cast in the borough elections.

In denying the validity of the first and most important of these arguments, the Court pointed out that the constitutionality of single-member district methods of election is conceded by everyone in spite of the fact that each voter is permitted to participate in the election of but one councilman out of the total to be chosen in the borough or city as a whole.<sup>14</sup>

In Ohio and Massachusetts, the courts also have decided in favor of the constitutionality of P.R. The favorable ruling in Ohio was based on the ground that the constitutional grant of home rule warrants the adoption of any method of election by home rule cities.<sup>15</sup> In Massachusetts, the attack on P.R. was based chiefly on the contention that the principles of limited and preferential voting were inequitable, discriminatory, and violative of constitutional guarantees of equal protection of equal laws and an equal right to elect officers. This argument was rejected as untenable by the Supreme Judicial Court in a unanimous opinion which gave careful consideration to nearly all of the grounds on which the legality of P.R. usually is challenged. The Court decided that P.R. was neither unreasonable nor discriminatory.<sup>16</sup> What attitude the courts of other states will take remains uncertain.

### *Suggested Reading*

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<sup>12</sup> *People ex rel. Devine v. Elkus*, 59 Cal. App. 396, 211 Pac. 34 (1922).

<sup>13</sup> *Wattles ex rel. Johnson v. Upjohn*, 211 Mich. 514, 179 N. W. 335 (1920).

<sup>14</sup> *Johnson v. City of New York*, 274 N. Y. 411, 9 N. E. (2d) 30 (1937).

<sup>15</sup> *Reutener v. City of Cleveland et al.*, 107 Ohio St. 117, 141 N. E. 27 (1923); *Hile v. City of Cleveland*, 107 Ohio St. 144, 141 N. E. 35 (1923).

<sup>16</sup> *Andrew L. Moore v. Election Commissioners of Cambridge*, 309 Mass. 303, 35 N. E. (2d) 222, (1941).

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## CHAPTER XIII

### NOMINATIONS AND OTHER ELECTORAL PROBLEMS

#### *Outline*

##### Methods of Nomination

- Partisan Direct Primary
- Non-Partisan Primary
- Petition System
- Self-Announcement
- Party Convention
- Caucus

##### Appraisal of Nominating Methods

##### Safeguarding Elections Against Intimidation, Fraud, and Corruption

- Australian Ballot System
- Voting Machines
- Registration of Voters
- Other Election Safeguards

##### Voting Qualifications

- Citizenship and Age Qualifications
- Residence Requirements
- Literacy or Educational Tests
- Property and Tax-Paying Qualifications
- Disqualifications

##### Non-Voting

NOMINATION processes are as important as methods of election, but the lighter vote cast at primary as compared to regular elections indicates that the average voter holds a contrary opinion. He fails to appreciate the fact that on election day he must either refrain from voting or support one of the candidates, whatever their quality, whose names are printed on the ballot. The experienced politician knows better. As Ed Flynn, boss of the Bronx, remarks, "Waiting until after the candidates are nominated is waiting until you have missed the boat."<sup>1</sup> The privilege of writing-in the name of some person who has not been formally nominated constitutes an unimportant exception to the statement just quoted. Control of nominations is a major objective of the professional politician. No better evidence of the significance of nomination processes is needed.

#### METHODS OF NOMINATION

The methods of nomination in use in the cities of the United States are

<sup>1</sup> *You're The Boss* (New York, The Viking Press, 1947), p. 233.

the partisan direct primary, the non-partisan primary, the petition system, the convention method, the party caucus or committee, and self-announcement. Of these methods, the first three are widely used, especially the partisan direct primary, whereas the others are provided for in comparatively few cities.

**Partisan Direct Primary.** The partisan type of direct primary is a nominating election participated in by the members of a party for the purpose of selecting its candidates for offices which subsequently will be filled by vote of the people. As now conducted, this nominating election involves use of the machinery, equipment and administrative personnel provided for regular elections, including polling places, official ballots, and election judges, clerks and inspectors.

Although the primaries of all parties are held on the same day, there is no competition between parties. Rivalry is confined to the persons who desire to become a given party's candidate for a particular office.

Placement of the names of contestants on the primary ballot is accomplished by filing either a simple declaration of candidacy or a petition signed by a stipulated minimum of qualified voters.<sup>2</sup> The states are about equally divided with respect to the use of these two methods.

There are two varieties of partisan direct primary, viz., the closed and the open. The closed form is designed to confine participation to voters who actually are members of the party. Several techniques for determining party membership have been devised. A widely used method is the application of a legally prescribed test in the event that a voter's claim to eligibility is questioned on the occasion of his request for a given party's ballot. In some states, for example, the challenged voter is required to take oath to the effect that he supported the party at previous elections and intends to support its candidates at the next election. Obviously, such a test proves effective only with the conscientious type of voter. Another system, superior to the "challenge plan," is to require enrollment of the voter as a party member either at the time of registration or at the primary election and to limit participation in subsequent primaries to "enrolled" voters. Most systems permit the voter to change his enrollment by conforming to a specified procedure. The details of the "challenge" and "enrollment" techniques vary from state to state. In some states party committees are empowered to define party membership. This practice is confined for the most part to states in the South.

A partisan primary is classified as "open" if any voter who so desires may participate therein. No attempt is made to check on the party affiliation of the participant. He receives the ballots of all parties and subsequently, in the secrecy of the polling booth, selects the ballot he wishes to mark. The chief advantages of the open primary are two in number, viz., the voter's party connection remains undisclosed<sup>3</sup> and no obstacles are placed in the way

<sup>2</sup> About half of the states require contestants to pay a comparatively small filing fee.

<sup>3</sup> In a few states, e.g., Vermont, the voter at a primary is given the ballot which he requests. Since no test of party affiliation is provided for, such a primary is really open in type. Under such circumstances the "secrecy" argument is inapplicable.

of shifts from one party to another. Its primary defect is the fact that a party is unprotected against possible invasions by members of other parties and pressure groups who wish to achieve results favorable to themselves.

Only a minority of the states (ten) have established the open primary, but in some of those providing a closed type the tests of party affiliation are so inadequate that for all practical purposes an open primary exists.

**Non-Partisan Primary.** The non-partisan primary is essentially an official elimination contest conducted for the purpose of reducing the number of candidates to two for each office at the final election. All qualified voters, irrespective of party affiliation, enjoy the privilege of participating in this type of primary. The names of contenders are placed on the primary ballot by petition, party designations are barred, and the two competitors polling the highest vote for an elective position become the nominees for that office at the subsequent election. In some jurisdictions, it is provided that a candidate obtaining a majority vote in the primary is forthwith elected to office. This is the practice, for example, in California and in the selection of aldermen in Chicago.

An example of departure from the normal procedure of filing a signature petition as a means of becoming a contestant in the primary is the Detroit practice of requiring a declaration of candidacy together with the deposit of a fee which amounts to \$100. This requirement applies only to the non-partisan primary which is held to select candidates for the council. The fee is returned to contestants who poll a vote equal to or greater than half of the support received by the competitor who wins with the lowest vote. In spite of this requirement of a deposit which is subject to forfeiture under the conditions indicated, 191 persons competed in the 1947 non-partisan primary for the selection of 18 nominees for the nine seats in the Detroit council; 159 contestants forfeited their fees.

**Petition System.** Nomination by petition, sometimes referred to as the filing of nomination papers or of a certificate of nomination, is a fairly common method of naming candidates for election, especially in cities which have adopted the commission and council-manager plans of government. Any person desiring to compete for a particular office obtains the signatures of the requisite number of qualified voters and files the signed petition with the appropriate official, usually the city or the county clerk.

The number of required signatures often is designated in terms of a certain percentage,<sup>4</sup> e.g., one percent of the body of qualified voters or of the total vote cast at the last election for all candidates competing for the office in question. Otherwise, a definite figure, such as 100, is established by law or by charter provision. In Boston, a petition of candidacy for the office of mayor requires 3,000 signatures.

<sup>4</sup> *The Model City Charter*, 5th ed. (New York, National Municipal League, 1941), includes a recommendation that under proportional representation the minimum number of names required on each petition should be from one-tenth of one per cent (in the largest cities) to one and one-half per cent (in the smallest cities) of the total number of voters at a normal municipal election. See Art. IX, 155, note 6. The establishment of a maximum number of signers also is advised to prevent attempts to eliminate competition in some neighborhoods by using all available signatures.



Generally speaking, the needed number of signers varies with the importance of the elective office and the size of the city, but there seems to be no consistent determining principle. Although the requirement of a large number of signatures is supposed to discourage frivolous candidacies, the theory fails in practice because of the readiness with which most persons sign petitions at the behest of petition pushers. Any qualified voter may sign, subject to the limitation that only one petition for candidacy may be signed for each office.

The period for filing petitions with the proper authorities is fixed by law and usually expires at least a month before the date of the election.

A variant of the petition plan is the "sponsor system" of nomination. This system, which has been used in California for several years, is favored by the National Municipal League's Committee on Revision of the *Model City Charter*, at least in connection with P.R. elections. The charter provides that any qualified elector of the city may be nominated for the council by petition of any ten such electors, who shall be designated as his sponsors.<sup>5</sup> Each sponsor is required to sign the petition and indicate his place of residence. The purpose of this stipulation is to inform voters concerning the identity of the persons who are backing a particular candidate. Another provision is that the petition must be accompanied by the nominee's signed acceptance of the nomination and by the deposit of a specified sum of money. This deposit is to be returned to the nominee if he polls a designated minimum of votes or withdraws his candidacy before the election.

**Self-Announcement.** Self-announcement, as a method of nomination, differs from the petition plan in that a person desiring to run for office need only file a formal declaration of candidacy without obtaining the endorsement of a substantial group of voters. Sometimes, however, the supporting affidavits of one or two citizens are required. If so, this method resembles the sponsor system. Simple self-announcement, although once common, now is seldom provided for in American cities.

**Party Convention.** The party convention no longer is in vogue as an instrumentality for selecting candidates for municipal office. It succumbed to the onslaught of the direct primary during the first two decades of the twentieth century. However, candidates for local offices still are named in this way in a few municipalities. Conventions are composed of delegates chosen by the rank and file of a party either at an official primary election or at caucuses held in the wards or precincts of the city. In addition to nominating candidates, conventions formulate party platforms and establish regulations concerning party organization.

**Caucus.** Before the development of the convention and the direct primary, nominations almost always were made either by self-announcement or by caucuses which commonly were referred to as primaries. Today, the

<sup>5</sup> Art. IX, § 155.

caucus is used in a comparatively limited number of small cities, towns, and villages, usually for the selection of candidates for council in connection with the ward system of election.

A caucus is a direct gathering of voters which normally is held on a strictly partisan basis. Although now regulated by law with respect to such matters as participation therein, violence, intimidation, bribery, and publicity concerning the time and place of meeting, caucuses are conducted in large part according to party rules and regulations.

#### APPRAISAL OF NOMINATING METHODS

Marked difference of opinion exists concerning the merits of the several methods of nomination. In choosing among them, consideration should be given to the unit of government for which the choice is to be made, the method of election, the effect of a particular process on political parties, the probable result with respect to the number and character of nominees, the burden imposed on the voting population, local conditions, and the expense.

Methods which are suitable under one set of circumstances may be undesirable under another. For example, assuming the success of the partisan direct primary in the selection of candidates for national and state offices, it does not follow that this mode of nomination is superior to all others as far as city government is concerned. Again, the selection of a nomination process for a boss-ridden community involves considerations which differ from those which bear on the choice of a method for cities in which machine politics have played a minor part or never gained a foothold.

The direct primary was developed as a corrective for the evils of the convention method. In theory, the latter plan meets all of the requirements of a satisfactory system for selecting the candidates of a party. The convention is composed of delegates who presumably represent the rank and file; the qualifications of potential candidates can be submitted to careful scrutiny and discussed at length; effective leadership develops readily; and the adjustment of conflicts of interest within the party through the process of discussion and compromise enables the party to present a united front to the voting public.

Unfortunately, these theoretical advantages seldom were realized in practice. Delegates, often of an undesirable type, were chiefly representative of machine politicians, party officials, and public officeholders who were interested primarily in the spoils of office. Political hacks, ward heelers, saloon-keepers, and even criminals were present in substantial numbers in many conventions, especially those held in the largest cities. This situation was attributable for the most part to the indifference of the respectable type of partisan and to his inability to cope with the rough and unscrupulous tactics resorted to by the professional politician in conducting the caucuses by which delegates were chosen. The qualifications of potential candidates were scrutinized and discussed in secret by political bosses and leaders who controlled the votes of delegates and arranged deals to suit their own convenience with little or no regard for the public interest. Harmony and a

united front were largely the consequences of a political dictatorship which rode roughshod over a poorly organized and intimidated opposition.

The foregoing characteristics were not exhibited by all conventions in the same degree, but abuses were sufficiently widespread to bring about reform through substitution of the direct primary. Although legal regulation has eliminated some of the most glaring abuses of the party convention, a restoration of this method of nominating candidates for city offices is unlikely. Other methods are considered more appropriate for the urban political process, and there is no indication of a public demand for the "regulated" convention. Moreover, the partisan convention is inconsistent with the continuing movement for non-partisan elections.

The direct primary has failed to fulfill the expectations of its most ardent sponsors. Nor has it actualized the most dire predictions of its opponents. The arguments for and against it usually have been formulated with the convention system in mind as an alternative method of nominating candidates. Comparisons with other processes seldom are made.

The most important of the claimed advantages of the direct primary are. (1) it enables the rank and file of a party to exercise a direct and effective control over the selection of candidates and thereby serves as a check on the irresponsible conduct of scheming politicians; (2) it gives party members who lack the support of those in control of the party organization a better chance of being nominated; (3) it develops a consciousness of power and responsibility in partisan voters which will prove an important factor in contributing to the success of democratic government. Other asserted advantages are that better candidates are chosen, that popular interest in nominations is increased, and that fraud, bribery, and shady deals are greatly curtailed.

Opponents argue that the direct primary destroys "party responsibility" for nominations, weakens party leadership, prevents the careful selection of candidates by a process of discussion and deliberation, and often engenders bitter factional fights which render difficult the presentation of a united front to the voting public. Among other alleged defects are the following: an additional burden is imposed on the voters; "unbalanced" tickets are named;<sup>6</sup> candidates often are inferior to and certainly no better than those chosen by convention, and the candidacies of demagogues and publicity seekers are encouraged; the cost of campaigning gives an advantage to the wealthy; primaries are expensive to conduct, and the multiplicity of candidates for nomination in the primary often results in a minority choice under the customary plurality rule.

An appraisal of these claimed merits and defects is difficult because of lack of reliable information concerning attained results. It is no easy task to ascertain causes and effects in political processes which are complicated by the presence of numerous factors not readily subjected to

<sup>6</sup> An unbalanced ticket is one which fails to take into consideration the interests of all major groups of voters. For example, if the slate of candidates of a party were composed solely of Protestants in a community with a strong Catholic or Jewish vote, the ticket would be unbalanced in that respect; again, there would be a lack of balance if all candidates happened to reside in the same section of the city.

scientific measurement. However, the tentative conclusions which have been drawn by many observers on the basis of available evidence will be summarized in the following paragraphs.

The direct primary is a weapon which the rank and file can use, if they so desire, to obtain their wishes in spite of the opposition of machine politicians and organization leaders. On more than one occasion so-called independents within a party have won the primary election. More voters participate in nominating primaries than in primaries held for the purpose of choosing delegates to conventions.

Although opinion is divided concerning the extent to which parties have been weakened, various investigators seem to agree that the direct primary has contributed to party weakness in some communities, especially in the case of minority parties. Voters and persons desirous of being elected to office have found it expedient to join the dominant party because the winners of this party's primary are almost certain to defeat the opposition at the final election. At times, bitter factional fights during a primary campaign seem to have been a contributing factor in causing the defeat of a party at the subsequent regular election. Apparently, too, the direct primary has increased the difficulty of obtaining effective and responsible leadership.

The general caliber of candidates selected by conventions and by direct primaries appears to be about the same. Wealth probably is as influential under one of these methods as under the other, and from the standpoint of costs and the burden imposed on voters, neither plan holds an advantage if proper safeguards be established in regard to the election of convention delegates and if the voter's duty to participate in such elections be generally recognized. Finally, if the several stages of the convention method—from the selection of delegates to the final choice of nominees—be taken into consideration, there probably are fewer opportunities for effective fraud and corruption in connection with the direct primary.

The direct primary has been established in all of the states except Connecticut. Few persons advocate a return to the convention method. Various proposals for improvement of the primary have been made from time to time. One of the most recent suggestions is to provide a new type of primary characterized by the following combination of features: (1) a pre-primary conference or convention to adopt a platform and to recommend a slate of candidates—an arrangement which is used in a few states; (2) retention of nomination by petition with provision for indicating on the ballot whether a candidate was nominated by petition or by party conference; (3) a single ballot with all candidates, regardless of party affiliation, grouped by offices—now used in the state of Washington; (4) a candidate obtaining a majority of the votes cast for a given office to be declared elected, but if there be no such candidate, the two highest to be competitors in the final election. The single ballot with candidates of different parties compet-

ing against one another in the primary is the distinctive feature of this proposal.<sup>7</sup>

A weighty objection to both the convention and the direct primary in the field of city government is based on the partisan character of these devices. Few parties of a genuinely local character have developed in the cities of the United States and national party lines usually are drawn in municipal elections. This fact is blamed for some of the misgovernment which occurs in cities.

National parties often have shown greater interest in strengthening themselves through the judicious distribution of local patronage than in striving for high standards of municipal government. Moreover, too large a proportion of the urban electorate votes according to national party affiliation without proper regard for local issues and the merits of competing candidates. It often has been said that Democratic and Republican programs concerning national defense, foreign policy, agricultural relief, the tariff, regulation of stock and commodity exchanges, and similar problems have no bearing on such local matters as adequate police and fire protection, the cleaning of streets, recreational programs, or zoning. Therefore, it is concluded, every effort should be made to encourage voters to disregard national and state party connections when participating in city elections.

Among the mechanical devices recommended to curtail adherence to national party lines are separate dates for municipal elections, the non-partisan ballot, and the non-partisan nominating primary. What is known as the non-partisan movement is the attempt to eliminate national party considerations from the local elective process. Obviously, the party convention and the partisan direct primary are inappropriate nominating methods from the standpoint of this objective.

Opponents of the non-partisan movement contend that there are good reasons for adhering to national party lines at the municipal level. Although national, state, and local units of government are largely concerned with fields of service which are distinguishable from one another, many problems can be solved satisfactorily only through the cooperative efforts of officials at all governmental levels. Taxation, the regulation of utilities, social security, public works programs, law enforcement, public health, housing, and planning are among the matters which directly affect nation, state, and city. Relations between the national government and cities are multiplying as the years go by, and cities, being creatures of the state, always have been subjected to extensive control by state governments. Under these circumstances coordination of national, state, and municipal policies becomes increasingly necessary. Many persons believe that the most effective instrumentality for coordination is the political party which is organized for action on the national, state, and local fronts. It also is asserted that political parties are essential to the success of popular government, especially in the larger cities; that the development of permanent municipal parties is unlikely because of the temporary significance of local issues; and that,

<sup>7</sup> This proposal is advanced and discussed in J. P. Harris, "A New Primary System," *State Government*, Vol. XXI, July, 1948, pp. 140-143 f.

consequently, organized action on the part of city voters depends upon adherence to national party lines.

The extent to which the non-partisan ballot and the non-partisan primary have proved successful is difficult to determine. Encouragement undoubtedly has been given to independent candidacies and independent voting, and perhaps political parties have brought forward somewhat better candidates and devoted more attention to local issues. However, national parties neither have been driven from the field of city government nor experienced difficulty in making known to the voter the identity of their candidates. Unless the voting population of a community has developed the habit of discriminating between national, state, and local issues, national partisanship continues to play a significant part in local elections.

Non-partisan ballots and non-partisan primaries are most frequently provided for in cities west of the Mississippi. Party ties have rested lightly on the voting population of this part of the country. Independent voting in western communities probably is the cause rather than the effect of the adoption of non-partisan devices. Cities in which party feeling is strong continue to have partisan elections in spite of non-partisan ballots and non-partisan primaries. In such cities, the non-partisan primary amounts to little more than a preliminary election at which the weaker parties are eliminated in preparation for a final election at which the choice between the stronger parties may be made by majority vote.

In the opinion of E. M. Sait, the true significance of the non-partisan primary is that "it restores to the parties freedom in conducting their own affairs, in determining membership, in nominating candidates. So far as it displaces the regulated party primary, it liberates the parties from legal regulation".<sup>8</sup>

Nevertheless, the non-partisan primary simplifies the task of those who are dissatisfied with the local records of the major parties. The dissenters, even though unorganized, can present their candidates to the general voting public with a better chance of gaining success at the polls.<sup>9</sup> Moreover, non-partisan devices, if adhered to for a sufficiently long period of time, seem to contribute in some measure to the development of local non-partisanship on the part of many voters.

The petition or sponsor systems of nomination which can be used with either a partisan or non-partisan ballot are advantageous in several respects. In comparison with the convention, the partisan direct primary, and the non-partisan primary, they are simple and easy methods of nominating candidates for elective offices. Groups of independent voters as well as parties are able to place the names of favored persons on the ballot with relative ease and without being hampered by the restrictions which usually

<sup>8</sup> H. R. Penniman, *Sait's American Parties and Elections*, 4th ed. (New York, Appleton-Century Crofts, 1948), p. 416.

<sup>9</sup> It should be noted that the partisan direct primary laws of nearly all of the states provide for the making of independent nominations by petition. This privilege normally is limited in various ways, e.g., by barring a person defeated in the primaries from being a candidate in the general election, or by disqualifying persons who voted in the primary from signing a nominating petition. Furthermore, the general election is necessarily partisan in type.

apply to nomination by petition when authorized under direct primary laws as a means of permitting independent nominations. Independent candidacies are encouraged. Finally, by eliminating primaries, these processes of nomination reduce costs and lighten the voting burden of the electorate.

Two of the principal objections to these plans are attributable to the ease with which nominations may be made. A likely consequence is a multiplicity of candidates for a particular office. This situation tends to confuse the voter and also to increase the likelihood that under the plurality rule the winning candidate will be a minority choice. Another unfortunate result is that politicians are afforded an easy opportunity to split the opposition vote by secretly nominating candidates to serve as decoys. A third major argument against these plans is that they free parties from legal regulation to the advantage of those in control of the organization.

The number of candidates likely to be placed in nomination under the petition and sponsor processes depends on a variety of factors which operate in an uncertain manner. Local traditions, the current political and economic situation, and the issues involved in the pending election are somewhat influential, as are the character of the office to be filled, the method of election, and the number of signers or sponsors required. Experience to date indicates that in general these methods produce a fairly large number of nominees.

In answer to those who condemn their use on this ground, proponents stress two points. First, they contend that a multiplicity of elective offices, rather than a large number of candidates per office, is the chief cause of blind and confused voting. The voter is said to experience little difficulty in deciding on his first choice among a group of candidates for a given office and on other choices as well if a preferential ballot is in effect. Secondly, it is pointed out that the possibility of a minority choice is always present whenever more than two candidates compete for an office and that the appropriate way to eliminate this possibility, if majority choices be desired, is the adoption of a satisfactory majority preferential election system. Single choice-plurality elections combined with nomination by convention, direct primary, or non-partisan primary fail to guarantee *real* majority choices even if there be but two contestants at the final election. With combinations such as these, minority choices simply occur at an earlier stage of the elective process.

One way of discouraging frivolous candidacies under the petition plan is to require a large number of signatures on nominating petitions. The effectiveness of this solution of the problem is open to question because of the ease with which professional petition pushers have been able to secure signatures.

Another device is the policy of requiring each candidate to deposit a sum of money which will be forfeited unless the support of a specified percentage of the voters is obtained in the election. Judging by results in the comparatively rare instances in which this plan has been tried in the United States, the posting of a substantial amount of money probably will be necessary in order to achieve a material reduction in the number of candidates.

As for the argument that the petition and sponsor systems play into the hands of organization leaders by freeing parties from the restrictive legal regulations associated with the direct primary and the regulated convention, it should be kept in mind that nomination by petition or by sponsors permits dissatisfied partisans to support candidates of their own choosing. This fact probably causes party leaders to think twice about taking action which might alienate a substantial number of the rank and file. In the words of a former mayor of Buffalo, "the so-called independent candidate for municipal office, the candidate who declares his intention of seeking public office without support of the so-called 'organization', gives a tremendous impetus to honest and decent local government".<sup>10</sup>

Since valid arguments may be advanced for and against each of the several methods of nomination, designation of a particular process as "best" for all cities is out of the question. Final choice for a given city, assuming that each city may be dealt with separately, should be based on various considerations. For instance, the determining factor may be the method of election. Thus the petition plan or its variant, the sponsor system, is the approved mode of naming candidates in connection with the Hare system of proportional representation and the Bucklin, Nanson, and alternative vote systems of majority preferential voting. Again, for cities which have suffered from machine politics or a blind and damaging partisanship based on national party lines, nomination by petition, by sponsors, by self-announcement,<sup>11</sup> or by non-partisan primary seems preferable to the partisan direct primary. These four methods give independents and enlightened partisans an opportunity to exert effective influence on the outcome of the elective process.

If genuine municipal parties develop in cities or if national parties maintain a healthier attitude toward local government, the case for the partisan direct primary is materially strengthened. Past experience indicates, however, that neither the convention nor the caucus deserve revival as partisan nominating devices in municipalities.

#### SAFEGUARDING ELECTIONS AGAINST INTIMIDATION, FRAUD, AND CORRUPTION

A popular election is designed to register the will of the people with respect to the matters which it is deemed proper for them to decide. This general purpose of all elections and the specific objectives of particular election methods may be defeated unless appropriate measures are taken to prevent intimidation, fraud, and corruption.

The degree to which elections are conducted honestly and fairly depends primarily on the code of political ethics which prevails in a community. At the same time, certain legal safeguards prove helpful in preventing the worst abuses. Among the devices which tend to preserve the purity of elections are the Australian ballot system, the registration of voters, the

<sup>10</sup> T. I. Holling, "Non-partisan, Nonpolitical Municipal Government," *Annals of the American Academy of Political and Social Science*, Vol. 199, September, 1938, p. 44.

<sup>11</sup> Simple self-declaration of candidacy possesses the virtues of the petition process but also exhibits the latter's weaknesses in greater degree.



definition and punishment of various fraudulent and corrupt acts in connection with nominations and elections, and regulations concerning the conduct of campaigns. Municipal elections fall within the scope of state laws pertaining to these matters.

**Australian Ballot System.** The Australian ballot system, which originated in Australia, gained a foothold in the United States in 1888 when prescribed for municipal elections in Louisville by the Kentucky legislature. Its essential features are four in number: (1) an official ballot provided by governmental authorities at public expense; (2) a blanket ballot in the sense that the names of all legal nominees for elective offices are printed on one ballot; (3) distribution of ballots within the polling place by government officials; (4) adequate provisions for secret voting. Nearly all of the states have established this system, but the detailed arrangements are diverse.

In its original form, the Australian ballot was a non-partisan ballot of the office-block type, i.e., the names of candidates were grouped according to the offices for which they were competing. The American variety commonly provides for party designations and frequently for party emblems, and in most jurisdictions the names of a party's candidates for all offices are arranged in the form of a *party column*.

Usually, the *party column ballot* includes a circle at the head of each column of candidates in order to simplify and thereby to encourage straight-ticket voting. The voter who desires to adhere rigidly to party lines need only place the required mark in this circle. If voting machines rather than paper ballots are used, appropriate mechanical devices are provided for the same purpose. As a rule, the *office block ballot* requires the voter to give separate indication of his favored candidate for each office, but in one of the states which use this type of ballot, Pennsylvania, facilities are provided for voting a straight party ticket by making a single mark. On the other hand, in a limited number of states, the party column ballot has been modified by omitting the party circle. In that event, even though he desires to vote a straight ticket, the voter is compelled to mark the candidate whom he favors for each office.

The office-block ballot without a simple device for a straight-ticket vote is often favored on the ground that it promotes the exercise of greater discrimination by the voter. It is said to encourage independent voting. This advantage is attributable to the fact that the voter finds it necessary to examine the block of candidates for every office in order to locate the name of the one for whom he desires to cast his ballot. Attention is necessarily directed to the competitors for particular positions and the voter is forced to expend as much effort to vote a straight ticket as to split his vote. As one of a number of devices for discouraging blind partisanship, the office-block ballot is considered especially desirable for municipal elections. It is, of course, the only type of ballot useable in non-partisan elections.

By reason of its "secrecy" feature, the Australian ballot system hinders

bribery, intimidation, and other modes of interference with the exercise of personal discretion by the voter. It has proved quite effective as a means of guaranteeing genuine freedom in balloting. If properly contrived in its details and administered by honest officials, it also prevents certain varieties of fraudulent voting, such as ballot stuffing and the "endless chain."<sup>12</sup>

Before the advent of this system and after the general practice of either *viva voce* voting or voting by show of hands had been abandoned, written or printed ballots were prepared by candidates, parties, other groups of voters or individual voters and distributed outside the polling booth, often in advance of the election. These privately furnished ballots varied in size, shape, and color and contained the names of only those candidates sponsored by particular distributors.

Eventually, practically all of the states enacted laws designed to secure "secrecy" in voting by making ballots uniform in appearance. For instance, the use of white paper was required and the permissible size of ballots was stipulated. These efforts, as well as others directed against various unfair and fraudulent practices, proved unsuccessful. The indisputable failure of state regulation of unofficial or privately furnished ballots finally resulted in the widespread adoption of the Australian ballot system. At present, South Carolina is the only state which has held out against this worthy reform.

**Voting Machines.** Either the voting machine or the paper ballot may be used under the Australian ballot system. Voting machines are advantageous in many respects. In addition to providing an accurate and quick count, they save time in voting; prevent the casting of defective ballots; reduce election costs by permitting the establishment of larger voting precincts and the use of fewer election officials; make recounts easier and less expensive in disputed elections; promote secrecy in voting; and eliminate many, but not all, frauds unless election officials are dishonest.

Objection to voting machines is based on the high initial cost, especially if machines become obsolete in a short time because of changes in election laws; the expense of upkeep; the possibility of tampering for fraudulent purposes; mechanical failures; and the prejudice of many voters. Although opinions differ as to the desirability of adoption, it may be significant that the questionable type of politician usually opposes the installation of machines.

**Registration of Voters.** The registration of voters is a technique resorted to in all but two states in order to forestall voting by unqualified persons, to prevent denial of the voting privilege to qualified voters, and to preclude qualified electors from voting more than once. Lists of qualified

<sup>12</sup> The "endless chain" is a method of defeating the purposes of the Australian ballot system. An official ballot is secured by dishonest means. This ballot is marked outside the polling place by the person who is perpetrating an election fraud and is given to an obedient voter who enters the polling place, receives a ballot and, without marking it, slips it into his pocket in the privacy of the polling booth. He then deposits the marked ballot in the ballot box and delivers the unmarked ballot to his confederate outside the polling place. This process is thereafter repeated by the next voter and continued indefinitely.

voters are prepared in advance of elections, and in most states only those persons whose names have been listed are permitted to vote.<sup>18</sup> The need for registration is particularly great in urban areas because of the large number of voters and the anonymity and mobility of city life.

Apart from variations in detail, registration systems differ from one another with respect to such basic features as participation by the voter in the registration process and the frequency with which registration lists must be compiled. Under the *personal* system each individual is usually required to prove his right to vote by appearing in person before the appropriate registration officials. A few jurisdictions permit registration by mail and in some instances a registered voter enjoys the privilege of registering the members of his family and servants. In any event, under the *personal* plan, the initiative lies with the voters rather than with officials. The descriptive term "non-personal" or "official" is applied to registration systems which dispense with personal appearance or application by the voter. Designated officials are charged with the responsibility of seeing to it that the names of all qualified voters are placed on the voting list. *Personal* registration systems are established in most jurisdictions. Although burdensome from the standpoint of the voter, this type of system is less likely to result in the omission of eligibles who desire to vote or in the inclusion of the names of unqualified persons, dead people, and fictitious individuals.

Until rather recently, most registration systems required the preparation of voting lists at regular intervals, viz., annually, biennially, quadrennially, and sometimes less frequently. This *periodic* registration, although an inconvenience to the voter, was generally justified by its proponents on the ground that it was an effective method of keeping lists up-to-date and curtailing certain fraudulent practices. *Permanent* registration now is established in approximately three-fourths of the states. Under this system a person registers once and need re-register only if he changes his place of residence to another voting district. An obvious advantage is a maximum of convenience to the voter. Another merit is reduced expense. Permanent registration costs about half as much as the periodic plan. Finally, the former system has proved as effective as the latter in the prevention of fraud.

The chief objection to permanent registration is based on the danger that the names of persons will be retained on the voting list after they have become disqualified for one reason or another. Continuous investigation by honest, capable, and industrious officials in charge of registration is needed to purge the lists of deadwood.

Among the means of checking registration and purging lists are the official house-to-house canvass; cancellation of those who fail to vote during a specified period of time, e.g., two years; scrutiny of death and marriage reports; use of the records of public utilities and moving concerns; the mail-

<sup>18</sup> In several states unregistered persons are sworn in at the polls and permitted to vote. Arkansas and Texas are the two states without registration systems, but voters are required to present poll tax receipts as a means of identification. In a few states registration is required only in urban areas.

ing of cards with the objective of cancelling the names of voters whom postal authorities are unable to locate; publication of lists; and identification of voters at the polls. Checking methods such as these should be employed whether the system is permanent or periodic, but in practice investigation sometimes is carried on in an ineffective and indifferent manner. No system will prove satisfactory in the event of official dishonesty, inefficiency or indifference.

Registration is valueless unless steps are taken to identify voters when they appear at the polls. The most effective and practicable means of identification is by handwriting. If the voter be required to sign his name at registration and again on election day, impersonation becomes a dangerous venture. A more widely used but less desirable technique is identification solely on the basis of factual information. Voters are required to furnish detailed information of a personal nature at the time of registration. The recorded information may include the voter's age, date and place of birth, color, height, weight, occupation, place of residence, length of residence in the state and district and similar facts. Identification tests of this type are by no means as dependable as handwriting or as finger-printing would be if utilized.

**Other Election Safeguards.** Another means of safeguarding elections is to define and prohibit acts of a corrupt and fraudulent character and to provide appropriate punishment for persons found guilty of committing them. Among the acts placed in the criminal category in most states are the following: intimidation of voters through physical and non-physical means; bribery in various forms; illegal voting, such as voting more than once, impersonation, voting if unqualified, and making distinguishing marks on ballots; fraudulent registration; ballot box stuffing; giving illegal assistance to voters; and various illegal acts of officials, viz., false counting, the fraudulent return of election results, permitting unqualified persons to register or to vote, and denying the privilege of registering or voting to qualified individuals. Obviously, corrupt practices acts lose significance unless violators are detected and prosecuted promptly and vigorously.

The purity of elections also is endangered by certain campaign practices. Accordingly, all of the states have enacted laws regulating the conduct of candidates, parties, and other groups in connection with campaigns for nomination and election. Most of the regulations pertain to the raising and spending of campaign funds. Limitations are placed on the amount of money that may be expended by or in behalf of candidates; legitimate and illegitimate expenditures are defined; contributions are restricted as to source and amount; the assessment of officeholders often is prohibited; and publicity concerning the receipt and disbursement of funds is required.

Political advertising also is subjected to various regulations. The content, time, and place of advertising sometimes is regulated; paid advertisements must be marked as such in many states; and a fairly large number of states require that the identity of sponsors of campaign literature be made public.

Provisions like these, as well as others of a miscellaneous character, are intended to prevent deception of the voting public.

Formal safeguards such as the Australian ballot system and registration of voters are important means of promoting honest and fair elections, especially in heavily populated urban areas. However, these and other protective measures seldom are entirely effective, and fraud and corruption still occur in municipal elections to an undetermined extent. Successful evasion of legal requirements, many of which fall short of the highest known standards, always can be expected as long as ethical obligations are subordinated to selfish interests. The road to purity in elections is difficult to travel, but most observers agree that substantial progress has been made during the last half century.

### VOTING QUALIFICATIONS

Voting qualifications are determined for the most part by state constitutional and statutory provisions, and only infrequently, and then to a minor extent, by special stipulations in city charters. Generally speaking, the qualifications for voting in municipal elections are the same as those which are prescribed for national and state elections.

In a few states constitutional provisions pertaining to the suffrage have been construed by the courts to prohibit the establishment of special requirements for participation in city elections, but in most states the legislature appears to possess discretionary power in this matter. Before the Nineteenth Amendment was added to the Constitution of the United States, some of the states which denied women the right to vote in national and state elections allowed them to take part in the selection of city and school officials. Again, until amended in 1928, the Rhode Island constitution confined the privilege of choosing city councilmen and voting on local financial questions to otherwise qualified persons who paid taxes on real or personal property located within the city and valued at \$134 or more.

At present, special qualifications, e.g., ownership of property or payment of taxes, are required in some jurisdictions for voting on proposed local bond issues, special assessments, or annexations of territory. Arrangements of the foregoing type are relatively few in number, and it seems unlikely that departures from the general practice of having one set of qualifications for all elections will occur to any appreciable extent in the immediate future.

**Citizenship and Age Qualifications.** In all but one of the states, the suffrage is confined to United States citizens who have attained the age of 21. The age limit has been lowered to 18 in Georgia. An age qualification is designed to prevent immature persons from voting. Although agitation for a lower limit recently has increased, the 21-year minimum probably will remain in effect in most states for some years to come.

The primary justification for a citizenship requirement is the warranted presumption of loyalty on the part of citizens. An alien owes permanent

allegiance to some other country and might be influenced by that relationship in exercising his voting privilege. Moreover, a citizen has a substantial interest in the welfare of his own country and presumably understands its political institutions, practices, and problems. At one time or another quite a few states granted the suffrage to aliens who had declared their intention of becoming United States citizens, but none does so at present. Arkansas, the last state to retain voting privileges for alien declarants, withdrew the right in 1926. It seems safe to predict that all of the states will continue to prescribe United States citizenship as a qualification for voting.

**Residence Requirements.** Residence requirements serve several purposes. One of them is to prevent such fraudulent voting practices as repeating and colonization. Repeating means voting more than once in a particular election. One method of so doing is to travel from precinct to precinct on election day with the objective of casting a ballot at each stop. This technique is rendered more difficult by the establishment of a residence qualification. Colonization refers to a temporary influx of persons for participation in elections. Confining the voting privilege to residents is a helpful means of combating this practice.

Other purposes of residence requirements are (1) to increase the likelihood that the voter will be acquainted with the problems confronting a community, and (2) to limit voting to persons who share the burden of governmental costs and have more than a passing interest in the community's welfare. Most people believe that outsiders are not bound to a community by sufficiently close ties to justify granting them a voice in its governmental affairs.

The soundness of this belief is open to question in the case of individuals who dwell outside a city but have a "business residence" therein. Anyone who regularly pursues his occupation in a particular community undoubtedly is directly and vitally affected by its policies and is in a position to become adequately informed about its problems. Many commuters in metropolitan areas who work in the city and sleep in its suburbs will testify to this fact. Of course, as non-residents in the accepted legal sense, they fail to carry a full share of the burden of financing governmental activities in the community wherein they work, but this aspect of the matter could be handled satisfactorily by appropriate changes in the taxing system. Be that as it may, the residence which still determines eligibility for voting in the United States is the permanent place of abode. The fact that you are a day-time or "working" resident counts for nothing as far as the suffrage is concerned.

In all states minimum lengths of residence within the locality as well as the state are prescribed. The necessary period of legal residence within the state is one year in 32 states, six months in 11, and two years in five. Greater variety prevails with respect to precinct and county requirements. A 30-day residence in the precinct is stipulated by 14 states, but the length of time in the remainder varies from as high as one year in one state to as low

as ten days in six states, with not more than six states having the same limit within the indicated range. County residence requirements vary from a minimum of 30 days to a maximum of one year. Most of the states prescribe from one to six months. A minority dispense with either the county or the precinct requirement.

**Literacy or Educational Tests.** Qualifications in addition to the universal citizenship, age, and residence requirements are established in a number of states. Nearly half of them (18) provide literacy or educational tests which usually are designed to ascertain ability to read, or to read and write, or sometimes to read with understanding. As a rule, registration officials are charged with the responsibility of giving these tests. In New York, however, the potential voter must submit a certificate of graduation from an elementary school using the English language as the medium of instruction or pass a relatively simple reading and writing test prepared by the State Board of Regents and administered by local educational authorities.

Literacy tests have failed to revolutionize voting; nor are they likely to in their present simple form. Even if reliable tests of aptitude or knowledge were devised to determine fitness for voting, it is doubtful if much would be gained thereby. Too many factors influence the voter, regardless of intelligence or training, and opinions inevitably differ concerning the wisdom of voting one way or another.

However, a reading and writing requirement, although easily met by most persons because of the prevailing policy of compulsory education, seems highly desirable. Ability to read is especially important with printed ballots in use and printed matter of one description or another constituting a major source of information. In cities, voters often are called upon to approve or disapprove of charters, charter amendments, and other measures placed on the ballot through use of the initiative and the referendum. Reading ability, and writing as well if paper ballots be used, certainly is essential if voters are to cast ballots without assistance.

The chief objection to literacy tests is that they may be, and sometimes are, administered in an unfair manner for partisan or other reasons. In the southern states, tests of this type often have been used to exclude negroes from voting. Perhaps they will be depended on to an increasing extent as a result of decisions of the Supreme Court which have defeated efforts to establish "white" primaries.

**Property and Tax-paying Qualifications.** Property and tax-paying qualifications, common during the eighteenth and early nineteenth centuries, still are found in a limited number of states, principally in the South. The property qualification usually is an alternative to the literacy test or some other requirement, and, like the tax-payment qualification, has been retained by southern states as an effective means of reducing the negro vote. Seven states in the South require the payment of poll taxes. North of the Mason-

Dixon line qualifications of the type under consideration seldom are prescribed. A few states, Arizona, Michigan, Montana, Nevada, Texas, and Utah, confine voting on local bond issues or special assessment proposals to otherwise qualified voters who own and pay taxes on property.

From time to time various persons urge revival of tax paying and/or property-owning qualifications. It is argued that ownership of property and payment of taxes are reliable indicators of fitness for voting. Opponents respond by pointing out that conclusive evidence of a definite relationship between wealth and political intelligence remains to be presented.

Another argument sometimes advanced by proponents of a taxpaying requirement is that those persons who pay the bills should possess a voting monopoly. The weakness of this contention lies in the fact that all who live in a community bear the burden of taxation, whether or not they make direct tax payments to the government, because many taxes are easily shifted either in whole or in part.

Recognizing the validity of this criticism, supporters of a taxpaying qualification usually place most emphasis on the argument that the steady increase in governmental expenditures never will be checked unless the suffrage is confined to persons who are *conscious* of the tremendous burden involved in an expanding program of governmental activity. Those who pay taxes directly to the government, i.e., the tax-conscious, are most likely, so it is argued, to take action which will prevent extravagant expenditures for socially unnecessary services.

The usual response to the above lines of reasoning is that government is more than a dollar and cents proposition, that the lives of all individuals are vitally affected by governmental policies, that liberty, safety, good health, and happiness are just as important, if not more so, than economy, and that economy cannot be measured solely in terms of the amount of money spent by a governmental unit.

In connection with this last point it is asserted that the proper tests of economy are the quantity and quality of service per unit of expenditure and the cost of community life in terms of both public and private outlay. Community costs may increase as a consequence of curtailed governmental activity. Thus, if cities maintain ineffective fire prevention and protection service, the loss of life and property due to fire increases and fire insurance rates rise. Again, if the construction and maintenance of street pavements is neglected, the cost of operating and repairing motor vehicles becomes greater and the accident hazard is raised. Apparent savings in the form of reduced public expenditures result in a more costly community life. So runs the counter argument.

Whatever the weight of argument pro and con, the American public has shown no disposition to restore property and taxpaying voting qualifications which usually are looked upon as being inconsistent with the principle of democracy. It is improbable that these requirements will be revived.



**Disqualifications.** Individuals who meet the positive qualifications prescribed for voting in any given jurisdiction may vote if they have registered and if they do not fall within one of the several categories of disqualified persons. All of the states deny the voting privilege to insane persons, idiots, and felons, and many disqualify for conviction of specific crimes, such as bribery and election offenses, betting on elections, or desertion from the army and navy. One or more states have disqualified paupers, vagrants, soldiers and sailors, persons under guardianship, and delinquent taxpayers.

The economic distress of recent times and the resultant relief programs for the unemployed have given rise to the contention that persons on relief should be denied the voting privilege because, being direct beneficiaries of the policy of governmental assistance, their votes are greatly influenced thereby. If this reasoning were carried to its logical conclusion, all groups receiving direct subsidies from the government, e.g., pensioned war veterans and subsidized farmers, and, perhaps, indirect beneficiaries like protected manufacturers, would be disfranchised.

An interesting question is whether the term "pauper", as used in the states which disqualify paupers, applies to individuals who have become dependent because of unemployment, presumably temporary, through no fault of their own. Judging by practice, the correct answer to this question is "no." The only reported instances of disqualification on this ground occurred in 1932 in two Maine cities, Lewiston and Waterville.

Considerations of fairness probably account for the general unwillingness to deny the voting privilege to unemployed persons who receive public assistance. Moreover, if persons on relief were to be deprived of the right to vote, they might resort to more objectionable, possibly violent, means of exerting influence on governmental authorities.

#### NON-VOTING

Many qualified persons fail to exercise their voting privilege. Non-voting is high in all elections—national, state, and local, but, generally speaking, the worst showing is made at the local level. The percentage of registered persons who neglect to vote in municipal elections varies from time to time and from place to place. Ordinarily, the proportion of non-voters to voters within the registered group runs from approximately one-third to one-fourth, but in many instances it is very much higher and only infrequently is it appreciably lower. If unregistered persons were taken into consideration, the ratios obviously would be higher.

The causes of non-voting are numerous. Among the more superficial are neglect to register or to take advantage of absent voting laws. The more fundamental causes include indifference, inertia, disgust with candidates and parties, a sense of futility, lack of reliable information, illness, and bad weather. Complete and precise knowledge concerning the why and wherefor of non-voting is unavailable, but such studies as have been made indicate that *lack of interest* is the primary reason.

This indifference may be attributed in part to the tremendous burden imposed on American voters. Registration, primaries, and elections occur with discouraging frequency for persons who spend most of their time earning a living and prefer to devote their leisure hours to recreational pursuits. Moreover, far too many officials are chosen by popular vote and too many propositions are submitted for approval or disapproval by the voters. The long ballot causes confusion and dismay and undoubtedly tends to kill interest. Another factor is the difficulty of obtaining trustworthy information concerning candidates and issues. Time and again the opinion is expressed that voting is meaningless, especially in local elections, because of the dearth of dependable knowledge concerning nominees for numerous minor offices. Some persons also feel that there is no point in voting when all candidates seem to be equally unfit to hold the offices for which they are competing.

A short ballot, fewer elections, better candidates, and improved sources of information probably would bring about a reduction in the number of non-voters. However, the attitude of many persons undoubtedly would be *unaffected by reforms of this or any other type*. The personal equation is involved in the problem of non-voting and even intensive civic training for youths and adults probably would prove ineffective as a means of arousing the interest of some individuals.

Compulsory voting, which involves the establishment of some sort of penalty for non-voting, has been tried in certain European democracies. It has been credited with success in producing a larger vote. Unfortunately, a heavy vote is not necessarily an intelligent vote; nor does compulsion guarantee interest. Perhaps the problem of non-voting is a molehill which has been mistaken for a mountain. There is no conclusive evidence that a heavier vote would produce different or better results, but it is known that the largest group of consistent voters is composed of the regular followers of well-organized political parties.

Persons who deplore light turn-outs at elections sometimes create the impression that more satisfactory results would be obtained if more people voted. Wishful thinking may be the basis of this view. Even if all potential voters actually were to participate in every election, the proportion of partisan to independent or of wise to foolish voters might remain the same in most instances. Statements concerning the way in which stay-at-homes would have voted had they gone to the poles are at best highly speculative in character. Perhaps the most sensible approach to the non-voting problem is to concentrate on ways and means of promoting *informed* voting. An incidental effect of such measures probably would be more extensive participation in elections.

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## CHAPTER XIV

### THE INITIATIVE, THE REFERENDUM, AND THE RECALL

#### *Outline*

- Mandatory and Advisory Referenda; The Initiative in Charter-Making
- The Initiative in Ordinance-Making and The Petition Referendum
  - The Initiative
  - The Petition Referendum
  - Legal Limitations on the Initiative and the Referendum
  - Protective Arrangements
  - Use of the Initiative and the Referendum
- Arguments For and Against the Initiative and the Referendum
- Comment
- The Recall
  - Removal of Elective Officers
  - Major Features of the Recall
  - Claimed Advantages of the Recall
  - Asserted Disadvantages
  - Experience with the Recall

IN MANY CITIES the voters are expected to do more than elect officials and participate in processes of nomination. Attention already has been directed to the submission of proposed charters and charter amendments to the voters, especially under home rule and optional charter systems.<sup>1</sup> Most home rule arrangements also provide for the initiative petition as a means of proposing and adopting charter amendments or of bringing the question of electing a charter commission before the electorate. Another fairly common practice is to require a popular vote on certain questions, e.g., bond issues, increases in the tax rate above established limits, the granting of franchises, the annexation of territory, or the local application of state laws of an optional type. Moreover, most city councils, if they wish, may submit various propositions to the electors for an advisory vote.

Popular votes on issues also take place as a result of two other procedures. One of them is the *initiative petition for the purpose of ordinance-making*. The other is the *petition or protest referendum* which likewise is designed primarily to enable the voters to participate directly in the process of legislation. This type of referendum also may be used in connection with charter-making, as under the Oregon home rule procedure. Ordinarily, the statement that a given city provides for the initiative and the referendum signifies that the voters enjoy the privilege of resorting to these two procedures in order

<sup>1</sup> Cf. *Supra*, Chapter VII.

to decide questions of policy which normally fall within the scope of the local ordinance-making power.

The several processes which result in popular votes on issues differ from one another in various respects. Among the most important points of difference are the circumstances under which a vote takes place, the origin of the proposition to be voted on, and the binding effect of the vote.

#### MANDATORY AND ADVISORY REFERENDA; THE INITIATIVE IN CHARTER-MAKING

The chief feature of the *mandatory referendum* is the fact that submission of certain issues to the electorate is required by constitutional provision, statute, or charter. An organ of government like the council, a charter commission, or the state legislature prepares the specific measure to be voted on, and the voters have the final say concerning the issue at stake. The mandatory referendum is part of the procedure prescribed by law for taking action of a designated type. Participation of the electorate is not left to the discretion of either the voters or some organ of local government.

The distinguishing characteristics of the *advisory referendum* are two in number, viz., the question of holding it falls within the discretionary power of some governmental agency, e.g., the council, and the result of the vote lacks binding quality.<sup>2</sup> Ordinarily, the proposition to be voted on originates with the body which decides whether the referendum is to be held.

Use of the *initiative petition in charter-making* was described in the discussion of the home rule problem. The proposal to be balloted on originates with the voters and the subsequent election occurs as a consequence. Although this method of direct action is authorized by law, resort to it rests with the discretion of the voters. The result of the vote determines the fate of the initiated proposal.

#### THE INITIATIVE IN ORDINANCE-MAKING AND THE PETITION REFERENDUM

**The Initiative.** The initiative for ordinance-making is essentially the same as the initiative which is used in the charter-making field. Apart from the end to be achieved, the major difference is that the former commonly is *indirect* in type whereas the latter almost always is *direct*. This distinction will be explained in the discussion which follows. Minor differences exist with respect to details of procedure.

The initiative involves two basic stages: (1) the proposal of an ordinance, and (2) the action on the proposal. Any qualified voter or group of voters may draft an ordinance embodying a desired policy. Petition papers then

<sup>2</sup> San Francisco has an arrangement under which either the mayor or one-third of the council (board of supervisors) may institute a "public policy" referendum on a broadly phrased question. In the event that the proposition is approved by a majority of those voting, the council is obliged to enact the necessary legislation. Thus the referendum is not purely advisory in character. See W. W. Crouch, "The Initiative and Referendum in Cities," *The American Political Science Review*, Vol. XXXVII, No. 3, June, 1943, pp. 491-504.

are circulated to obtain the minimum number of signatures required by law. This minimum varies from 5% of a stipulated base<sup>3</sup> in some cities to as high as 25% in others.

The proposed ordinance and the supporting petition are filed with a designated official, frequently the city clerk, who is legally obliged to check the petition in order to determine if it has been signed by the proper number of qualified voters. If all legal requirements have been fulfilled, the clerk so certifies to the council and the proposal stage is completed.

The nature of the next step depends on the type of initiative. If it be *indirect*, the council is afforded the opportunity to act on the proposal. In the event of adoption without alteration, no further proceedings take place. The petitioners have gained their objective. However, if the council rejects or amends, the initiated ordinance is placed on the ballot either at the next general election or at a special election.<sup>4</sup> The council's substitute proposal, if any, also appears on the ballot. In practice, councils rarely approve of an initiated ordinance or submit a substitute measure. Adoption of an initiated ordinance or the substitute, if there be one, usually requires only a majority of those voting thereon, but sometimes this majority must constitute not less than a specified percentage, e.g., 35%, of the total vote cast at the election. In some jurisdictions the requirement is a majority of those voting at the election.

Under the *direct* initiative, the next step following proposal and certification is submission of the initiated ordinance directly to the electorate without first giving the council an opportunity to take action. The council is completely short-circuited. Consequently, alternative measures appear on the ballot only if brought forward by an initiative petition sponsored by some other group of voters. In American cities the indirect initiative is more often provided for than the direct.

Details of procedure vary considerably throughout the United States, especially with reference to the required number of signatures and the time limits to be observed in taking the several steps of the process. The following summary of some of the provisions of the *Model City Charter* will give the student a more concrete picture of the details for which provision must be made.

The petition must be signed by qualified electors of the city equal in number to at least 10% of the registered voters at the last regular municipal election. Petition papers shall be uniform in size and style, contain the full text of the proposed ordinance, and include the names and addresses of the five electors who serve as a committee of the petitioners and assume responsibility for the circulation and filing of the petition. Signatures shall be in ink or indelible pencil and each signer shall identify his place of residence. Valid-

<sup>3</sup> The base usually is either the total vote cast at the preceding municipal election or the total for all candidates competing for a particular office, e.g., the mayoralty. Infrequently, but preferably, it is the total number of registered voters in the municipality. In some jurisdictions a stated number of signatures is specified, e.g., 15,000.

<sup>4</sup> Ordinarily, the question of holding a special election rests with the discretion of the council. In some communities a special election is mandatory if the petition be signed by a sufficiently large number of voters.

ity of the petition shall be determined by the city clerk within *20 days* after filing and the result shall be certified to the council at its next regular meeting. The council shall conduct a public hearing on the initiated ordinance and take final action not later than *60 days* after the date on which the ordinance was submitted to it. Submission to the electors shall occur not less than *30 days* nor more than *one year* from the date on which the council reaches a decision. The foregoing are but samples of the procedural details which the initiative involves.

**The Petition Referendum.** The petition or protest referendum differs in a very fundamental respect from the initiative. It is a method by which electors may bring about a popular vote on a *measure which the council has adopted*. Thus the proposition voted on originates with the council rather than with the people. The latter may uphold the action taken by the council or apply an absolute veto.

Although the petition referendum resembles the veto power of a mayor, it differs therefrom in several respects. Usually, the mayor's veto is suspensive rather than absolute and is applicable to all ordinances enacted by the council. Moreover, every ordinance is automatically submitted to the mayor for approval or disapproval. Submission does not depend on his discretion. In the case of the referendum, however, a popular vote occurs only if a petition so demanding be filed; the decision reached by the voters is final and may not be overridden by the council; and the law usually bars resort to the referendum under certain circumstances and in regard to designated types of ordinance.

The first procedural step taken under the petition referendum is the circulation and subsequent filing of a petition demanding that a measure passed by the council be submitted to popular vote. Any qualified voters are eligible to institute this action and to obtain the required number of supporting signatures. This number ordinarily is expressed in terms of a percentage of the vote cast at the preceding municipal election for some designated office, e.g., that of mayor. Sometimes the base used in calculating the required minimum number of signers is the entire vote polled at the last election or the total number of registered voters. The percentage to be applied to the prescribed base varies from city to city within a range as wide as from 5% to 25%. Any qualified voter may sign the petition.

This first step must be taken within a certain time limit established by the charter or controlling law. The time allowance varies from 10 to 90 days after adoption of the measure with respect to which it is intended to invoke the referendum. Enforcement of the ordinance is suspended during this period. A typical provision is that no ordinance is to become effective until 60 days after its passage.

After the petition has been filed with the proper authority, usually the city clerk, it is checked against legal requirements. If satisfactory in this respect, it is certified to the council. This body may rescind the ordinance in question. In the event that it refuses to do so, as almost always is the case, it must

provide for placing the question on the ballot at the next general election or at a special election. The voters then take over. If the ordinance is approved by a majority of those voting thereon, it becomes law. Otherwise, it is "vetoed."

**Legal Limitations on the Initiative and the Referendum.** Legal restrictions on the use of the initiative are fewer than in the case of the referendum. With comparatively few exceptions, the initiative may be resorted to in order to bring about the adoption of any proposition falling within the scope of the legislative power delegated to the city as a municipal corporation. The standard exceptions are ordinances providing for the levying of taxes and measures authorizing expenditures. Sometimes, too, the initiative may not be used for other purposes, e.g., to grant certain franchises or to compel the undertaking of local improvement projects.

Apart from express restrictions of the foregoing type, limitations arise from the presumption that the initiative is a privilege granted solely for the purpose of permitting the people to exercise *legislative* power. Administrative and quasi-judicial actions fall outside the scope of the initiative. Examples are the appointment or removal of an officer, the approval of appointments made by the mayor, and the settlement of claims against the city.

Although the controlling principle is clear, difficulty has been encountered in drawing a line of demarcation between legislative and other functions. The courts are in disagreement concerning the test to be applied. Since the same problem has arisen in connection with the referendum, it will be given further consideration below.

Restrictions on the use of the referendum are similar to those which apply to the initiative. As a rule the referendum may not be invoked against appropriation and revenue ordinances. Moreover, its use is banned with respect to ordinances which the state requires the city council to enact. In addition, a widespread practice is to prohibit resort to the referendum against emergency measures, i.e., ordinances which the council enacts in an *emergency* for preservation of the peace, safety, and health of the community. To discourage abuse of its power to declare the existence of an emergency, the council in some jurisdictions is required to take action by an extraordinary majority and to state its reasons for asserting that an emergency situation has developed.

As with the initiative, the prevailing rule is that the referendum is applicable only to the exercise of legislative as distinguished from administrative or quasi-judicial power. Inasmuch as the privilege of the initiative and referendum often is granted with respect to *ordinances*, the courts have been called upon to decide whether the form of enactment (ordinance, resolution, motion, or order) or the substance of action is controlling.

It has been argued that any council action embodied in an *ordinance* is subject to the protest referendum. The effect of this point of view in the case of the initiative would be to permit its use in regard to any subject on which the council has acted by ordinance. An ordinance passed by the council



could be repealed or altered by subsequent resort to the initiative. However, the weight of judicial authority supports the view that only legislative action lies within reach of the initiative and the referendum and that the form of the council's action, whether by ordinance, resolution, or motion, is immaterial.

This position was taken by the court in a Nebraska case<sup>5</sup> in which it was decided that council action in accepting a bid and directing that a contract be entered into is an administrative rather than a legislative act and therefore not subject to the initiative and the referendum. The question of whether a given act is legislative or administrative in character often has given rise to litigation. Thus the scope of the initiative and the referendum is subject in large measure to judicial determination.

**Protective Arrangements.** An interesting question arising in connection with the initiative and the referendum concerns the authority of the council subsequently to alter or rescind ordinances which the voters have adopted. The *Model City Charter* provides for amendment or repeal by the council as in the case of other ordinances. Many cities, however, have undertaken to safeguard ordinances enacted through the initiative against later council action.

Some charters provide that an ordinance proposed and adopted by the people may be amended or repealed only through the same procedure. Others make this right exclusive for a designated period, e.g., two years, but vest concurrent authority in the council thereafter. Under either arrangement the council usually is permitted to propose alteration or repeal. In some cities the council may amend or repeal at any time, subject only to the requirement that such action be taken by an extraordinary majority.

Generally speaking, the *Model City Charter's* provision on this point seems most desirable, especially since the protest referendum may be invoked against any council ordinance which seeks to alter or revoke a measure previously adopted through the initiative. It seems unwise to tie the hands of the council in regard to changes in policy which future developments may make advisable. The initiative is too cumbersome a procedure to be relied upon to the exclusion of other legislative processes.

Special protection seldom is expressly provided for the referendum because the action of the electors is confined to approving or disapproving measures first adopted by the council. An ordinance which a majority of the voters have upheld is unlikely to be altered or repealed by the council unless this body is convinced of the need for departure from the policy which it originated. If the voters have "vetoed" an ordinance, subsequent re-enactment of the same measure by the council may be checked by again invoking the referendum.

Perhaps a special safeguard is needed in one contingency, viz., if the council attempts to circumvent the referendum by repealing an ordinance after a petition has been filed, in which event no election is held, and then

<sup>5</sup> *Read v. City of Scottsbluff*, 139 Neb. 418, 297 N. W. 669 (1941); see also *Lewis v. City of South Hutchinson*, 162 Kan. 104, 174 P. 2d 51 (1946).

re-enacting it at a later date. Such obstructive tactics have resulted in judicial rulings to the effect that under the stated conditions the council may not again pass the same ordinance or one which is essentially the same. It may, however, legislate on the same subject, provided that the new ordinance does not contain the objectionable features which led to the filing of the original petition for a referendum.

**Use of the Initiative and the Referendum.** All but three of the states<sup>6</sup> permit use of the initiative and/or the referendum, especially the latter, in at least some, if not all, classes of cities. Twelve states have done so by constitutional provision.<sup>7</sup> In the United States, these instruments of direct legislation first were authorized for cities by the Nebraska legislature in 1897 and provided for in the home rule charters of San Francisco and Vallejo, California, in 1898. Thereafter, especially in association with the adoption of commission and council-manager charters during the twentieth century, their spread was rather rapid.

Considering the opportunities, neither the initiative nor the protest referendum have been resorted to with great frequency. Most popular votes on issues have occurred in connection with mandatory referenda on charters, charter amendments, and bond issues. Comparatively recent studies indicate that these devices are invoked more often in large communities than in small ones and that the referendum is used more sparingly than the initiative. It also is apparent that the voters are as likely to reject measures as to approve them. Roughly sketched, that seems to be the over-all picture, but, of course, the records for particular cities vary in one direction or the other from the general performance.

From the standpoint of subject matter, a great variety of ordinances have been acted on, either favorably or unfavorably, by the voters. Among the topics dealt with by ordinances proposed through the initiative or submitted to the electorate by resort to the protest referendum are the following: anti-picketing; working conditions on street railways; wage-scale policies on city contracts; location of slaughter houses, saloons, dance halls, and such public buildings as city halls and police stations; garbage disposal; street car fares; jitney buses; Sunday movies; gambling; zoning; parking meters; removal of cemeteries; civil service and pension plans for firemen and policemen; and salary schedules for municipal employees.

In recent years considerable use of the initiative has been made by municipal employees for the purpose of bringing about the adoption of desired policies with respect to the selection and promotion of personnel, compensation, and pensions. There is a noticeable tendency toward resort to the instrumentalities of direct legislation on the part of various pressure groups as a means of securing or preventing the adoption of policies in which they have a special interest.

<sup>6</sup> Delaware, Indiana, Rhode Island.

<sup>7</sup> Arizona, Arkansas, California, Colorado, Maine, Maryland, Nevada, Ohio, Oklahoma, Oregon, South Dakota, and Utah.

**Arguments For and Against the Initiative and the Referendum.** Opinion always has been divided concerning the desirability of the initiative and the referendum. Agitation for these reforms dates back to the period during the last half of the nineteenth century and the early part of the twentieth when conditions in the field of municipal government were much worse than they now are.

In many municipalities local organs of government were dominated by political machines, bosses, and sundry "interests" which exhibited a discouraging but profitable indifference to the public welfare. Councils often abused or misused their powers and ceased to be responsive to public opinion. Loss of faith in the council, together with the conviction that good government would be achieved if only the will of the people could become effective, led to the demand for the initiative and the referendum.

More democracy was looked upon as a potent remedy for an admittedly bad state of affairs. The reformers also advocated home rule, better forms of city government, non-partisan elections, improved methods of nomination, and other devices which would help to free communities from the grip of selfish interests and thereby promote the cause of good government.

The primary argument in favor of the initiative and the referendum is that these instruments are weapons in the arsenal of democracy which enable the people to achieve desired objectives in the event that the government of a city proves unresponsive to public opinion. If the council refuses to adopt a policy which the public favors, the initiative permits positive action to be taken; if the council embarks on policies detrimental to the public interest, the referendum affords an effective means of checking such action. Neither device is intended to be used regularly as a substitute for the normal legislative process. Both should be made available as instrumentalities for action in political emergencies.

A second contention, which is a derivative of the first, is that the availability of the initiative and the referendum will have a salutary effect on public officials. Their standards of conduct will be raised because of the realization that the people no longer are completely dependent upon them during the intervals between elections. They will be unable to pursue selfish interests without risk of public intervention.

Thirdly, with the initiative and the referendum at their disposal, it will be safe for the people to grant broader powers to city officials, to concentrate authority, and to lengthen terms of office. Adherence to an extreme separation of powers and check and balance system no longer will be necessary as a means of preventing abuses of power. Nor need there be reliance on numerous detailed legal restrictions which, although intended to forestall misuses of authority, have proved to be obstacles to the achievement of more effective and efficient government.

It often is claimed that possession of the power of direct legislation will stimulate voters to take greater interest in questions of policy, to watch council proceedings more carefully, and to seek more and better information about the problems which confront a city. The power to act promotes

development of a sense of responsibility and tends to overcome the apathetic attitude of many voters who feel that little is gained by paying attention to public business unless "something can be done about it." Through the initiative and the referendum, something can be done.

Finally, the initiative and the referendum are favored as aids to the promotion of good will within a community. Dissatisfied elements are able to appeal directly to the voters. Even if their pet projects are rejected, the fact that they have had their "day in court" helps to clarify the atmosphere, to relieve tense local situations, and to restore good feeling.

The opponents of the initiative and the referendum argue that the proper remedy for misgovernment is the re-organization of governments in such a way as to make them both representative in character and effective as instrumentalities for action. Simplified forms of organization, adequate powers, definite location of responsibility, satisfactory methods of nomination and election, and the short ballot will enable the people to obtain the kind of government they want, if they are sufficiently interested to devote the necessary time and attention to public affairs. While the initiative and the referendum appear to be desirable additions to reforms of the foregoing type, in practice they produce undesirable results.

It is argued that the electorate is in no position to perform the legislative function in a proper manner. The problems of government are becoming more complex as the years pass by and the voters lack the organization, knowledge, information, and opportunities for discussion and compromise which are needed if sound decisions are to be made. Having the electors go to the polls, if only occasionally, to vote "yes" or "no" on a proposed ordinance which comparatively few of them understand is a hit or miss way of settling questions of policy. Even if the bulk of the voters were adequately informed, the "take it" or "leave it" alternatives are too restricted in number to permit the voter to register his real opinion. He may like some features of a proposal and dislike others, but nevertheless he must vote "yes" or "no," or simply dodge the issue by not voting.

A disadvantage of the initiative is that it affords opportunity to pressure groups to submit pet projects to the voters with a fairly good chance of securing adoption. Effective propaganda may mislead many of those who do vote and the indifference of the large number of electors who refrain from voting on issues increases the likelihood that the militant advocates of a proposal will be able to muster enough support to obtain a majority of those voting on the proposition. In short, a minority of the voters is able to have its way because of the apathy of a substantial proportion of the electorate.

As for the referendum, it enables selfish but energetic minorities, for these same reasons, to prevent action taken by the council from becoming effective. Both devices, although designed to serve the interests of the general public, are more than likely to be manipulated to the advantage of seekers of special privilege.

Opponents also charge that the initiative and the referendum have a bad psychological effect on councils. Their sense of responsibility is weakened.

Councilmen are less likely to examine proposals with care on the theory that if mistakes happen to be made the voters are in a position to rectify them. In connection with highly controversial measures, in particular, the council may dodge the issue by failing to act and by permitting the voters to reach a decision in the event that the initiative is invoked, as it is likely to be. On the other hand, councilmen may adopt some sort of policy with confidence that resort to the referendum will place ultimate responsibility on the voters.

Another objection is that division of legislative responsibility between the council and the electorate hinders the development of coordinated programs of action. Conflicting policies may be adopted because the voters act on particular proposals without thinking in terms of all aspects of city government, without appreciating all of the consequences of their action, and without even knowing whether the suggested ordinances harmonize with those already on the books. The initiative is more objectionable in this respect than the referendum.

A final argument against direct legislation is that it lengthens an already long ballot. The voters are called upon to vote on issues as well as on men. An inevitable result is confusion on the part of the voter. Adding to his burden tends to lower the quality of his action. He will vote more blindly than ever before and thus play into the hands of those persons who are only too willing to "guide" him. The best way to undermine democracy is to carry its principles to an unworkable extreme.

**Comment.** The most convincing of the arguments in support of the initiative and the referendum is the one which stresses their value as a means of enabling the people to have their way in the event that city authorities prove unfaithful to their trust and indifferent to public opinion. A weapon behind the door undoubtedly is a handy thing in case of an emergency situation, provided that it isn't used on other occasions.

These devices are undesirable if used as regular substitutes for policy determination by the council. Their original sponsors never intended that they should be. The mass of voters are in no position to deal wisely and sensibly with complicated questions of policy, many of them rather technical in character, by merely voting "yes" or "no" at an election. A simple proposition, e.g., Sunday movies, may be handled adequately in this manner. However, problems such as the selection of sources of water supply, methods of garbage disposal, the proper location of public buildings, specific pension plans for public employees or salary schedules require solution by representatives with more experience, better sources of information, and better opportunities for discussion than are available to the voting population. Campaigns and elections are not very suitable devices for formulating and adopting policies.

Generally speaking, the emergency value of the initiative and the referendum seems sufficiently great to warrant assumption of the risk that at times these instrumentalities will be improperly used. Experience to date indicates

that this risk is minor, but the future may bring about a change in the situation and produce the evil effects which opponents anticipate. There is even now some evidence, for example, to support the contention that pressure groups will take advantage of these devices to the detriment of the best interests of the public. For those who have faith in the judgment of the people, this menace seems slight.

One problem remaining to be solved in connection with the use of the initiative and the referendum is that of providing the voters with adequate information concerning the propositions to be voted on. Explanatory pamphlets, including arguments pro and con, are issued by the government and/or by civic associations in some communities. Publication of proposed measures in newspapers is a standard legal requirement. Newspaper articles and explanations and debates presented over the radio afford other avenues of publicity, as do discussions conducted by or before service clubs and various local associations. However, providing information is but part of the problem. The greatest difficulty is to arouse sufficient interest on the part of enough voters to cause them to make use of such information as is available. Perhaps this is an insoluble problem.

In many communities there probably is no real need for the initiative and the referendum because sound traditions have resulted in the proper functioning of representative institutions. The situation in others is quite different. In such cases provision for direct action by the voters is desirable in order to give them an opportunity to obtain what they want in the way of governmental policy.

#### THE RECALL

The election of officials for restricted terms is the traditional method of providing for popular control of public business. Governments of the democratic type are so organized that officers chosen by the voters bear ultimate responsibility for the formulation, adoption, and administration of public policies. The purpose of limited tenure of office is to permit the electorate to appraise results at regular intervals and either to continue incumbents in office for another term or to replace them with persons who are considered more likely to render satisfactory service.

Generally speaking, the term of elective positions in American cities falls within a range of from two to four years. The scheduling of elections every two, three, or four years normally affords the voters adequate opportunity to hold officers to account for their actions. However, since mistakes in selection may occur, the public interest requires that provision be made for the removal of undesirable officials before the expiration of their legal terms of service. Among the questions to be settled in establishing a removal process are the authority in whom the removal power is to be vested, the causes for which removal may be made, and the detailed procedure to be observed.

**Removal of Elective Officers.** The prevailing practice has been to make the removal of elective officials rather difficult. In cities, the council usually possesses the power to remove elected officers *for cause* in conformity

with a procedure which involves legal notice, the presentation of specific charges, an opportunity to be heard, and a formal finding reached by either an ordinary or an extraordinary majority such as two-thirds or three-fourths. Removals also may be made by competent tribunals through properly instituted judicial proceedings, but only for such causes as misfeasance, nonfeasance, malfeasance, maladministration, fraud, corruption, or similar official misconduct.

Both of these processes of removal are hedged about by legal restrictions and are inapplicable to situations in which the demand for removal of an elected officer is based on lack of confidence in him or on dissatisfaction with his policies, his attitude, his judgment, or his general behavior in discharging the responsibilities of his position.

In a few states, an additional method of removing elective local officials is by action of the state governor. However, the governor's power usually is restricted to the making of removals for *legal cause*, and in any event it seldom is used except in flagrant cases. The political repercussions are likely to be unpleasant because of local resentment against state intervention.

If the foregoing be the only methods of removing elective officials, the voters, once they have chosen an officer, are for all practical purposes "stuck" with him for the duration of his legal term. He may prove to be incompetent, unfaithful, inefficient, corrupt, or disdainful of public opinion. Nevertheless, unless some tribunal or duly authorized agency like the council decides to take action against him, the people who placed him in office must wait until his term expires before choosing a successor. To rectify this situation, a method of removal by recall has been provided for in many cities. It first was established in this country in the charter of the city of Los Angeles in 1903. About three-fourths of the states<sup>8</sup> have authorized its use by some or by all cities.

The recall is a device which enables the voters to remove an officer before the expiration of the term for which he was originally selected. It involves an election at which the entire electorate is given the opportunity to decide whether a particular official is to remain in office or to step out. The initiative in bringing about this election lies with the voters themselves. One or more of them may set the machinery in motion by conforming to the procedure set forth in the charter or applicable law.

**Major Features of the Recall.** Detailed provisions for the recall vary considerably throughout the United States. The discussion which follows will be confined to a description of the most common major features supplemented by occasional reference to arrangements of a somewhat unusual type.

In most municipalities the recall may be invoked only against officials who have been elected by the voters. Some cities, however, permit its use with respect to appointive as well as elective officers. The advisability of so doing is questionable. Positions filled by appointment usually call for the

<sup>8</sup>No provision for use of the recall has been made in Alabama, Delaware, Indiana, Kentucky, Maryland, New York, Pennsylvania, Rhode Island, Utah, and Vermont.

performance of executive, administrative, or judicial functions and very often the work to be done is technical in character. The electorate is not too well qualified to pass sound judgment on the desirability of removing the holders of such positions from office.

Moreover, the agency vested with the power of appointment normally possesses authority to make dismissals and application of the recall to an appointive post results in a division of responsibility between the voters and the official who makes the original selection. The latter should be completely responsible for the conduct of his subordinates. He has to work with them and should be free to retain them if he considers their performances satisfactory. Then, too, an appointed subordinate may incur the dislike of the public by reason of action which he has been ordered to take. Under such circumstances it is unfair to permit the voters to remove him. Nevertheless that may be his fate if the recall is applicable to appointive posts.

Dayton, Ohio, and Long Beach, California,<sup>9</sup> afford examples of cities which authorize removal of the city manager, a council appointee, through the recall. Fortunately, few cities operating under the council-manager plan have committed the same mistake.

The first major step in recall procedure is the filing of a petition, together with supporting reasons, demanding that an election be held in order to bring about the removal of a designated official. In some jurisdictions, a preliminary requirement is the making of an affidavit or declaration of intention indicating the officer against whom the recall is to be invoked and setting forth the reasons for so doing. This affidavit must be signed by a specified number of sponsors, perhaps ten, and filed with the city clerk who publicizes it, sends a copy to the official who is under attack, and prepares the petition blanks which subsequently will be circulated by the sponsors.

Under either procedure, the recall petition must be signed by a minimum number of qualified voters. This minimum usually is expressed in terms of a percentage of the total vote cast at the last election for all candidates competing for the office in question or for all nominees who sought a designated position, e.g., the office of mayor. Ordinarily, the required percentage of signatures is from 15% to 25%, but in some instances it is lower and frequently it is higher, e.g., 40% or 51%. The signed petition is filed with the city clerk for checking and certification.

After the certified petition has been presented to the council, the latter is obliged to arrange for a recall election unless the official against whom the movement is directed decides to resign within a prescribed time limit, such as five or ten days. Practice varies with respect to the type of election.

The original recall provision of the Los Angeles charter merely provided for an election at which the incumbent competed against other candidates striving to replace him. Whoever polled a plurality vote was declared elected. If the incumbent obtained the most votes, he remained in office, but if one

<sup>9</sup> Manager Hewes of Long Beach was recalled in 1922 after "eighteen months of very efficient service." See F. L. Bird and F. M. Ryan, *The Recall of Public Officers* (New York, The Macmillan Co., 1930), pp. 223-226.



of the competing candidates won a plurality, this competitor served the unexpired portion of the incumbent's term.

A number of cities provide for this type of recall election. It obviously is rather unfair to the incumbent because the question of his removal is confused with the choice of a successor. The voters are likely to vote for the candidate who seems most satisfactory and forget that the primary issue is whether or not the officeholder's record is so poor as to justify his ouster.

This weakness led to the development of a different type of election at which the electorate is required to do two distinct things: (1) vote "yes" or "no" on the specific question of removal, and (2) at the same time choose a successor who takes office only if a *majority* of the electors vote in favor of removal. As a rule the incumbent's name is excluded from the list of candidates from whom a successor is to be chosen by plurality vote. This type of recall election now is provided for in most cities. It represents an improvement on the original Los Angeles plan,<sup>10</sup> but still is somewhat unfair to the incumbent because the voter's reaction to the first question may be affected by his views concerning the candidates who are competing as potential successors. If one of them appeals very much to the elector, he may favor recall even though he might have voted differently if only that question had appeared on the ballot.

The fairest type of recall election is one at which the sole issue presented to the voters is whether or not the officeholder shall be removed from his position. If a majority of those voting on this specific question decide that he should be ousted, a second election is held to fill the vacancy which has been created. An additional election is expensive and burdensome to the voters, and it is for this reason that comparatively few municipalities have adopted this third type of recall procedure.

Some cities, like San Francisco, have solved the problem by eliminating the second election and by providing instead that if the recall movement meets with success the resulting vacancy shall be filled in the manner prescribed by charter or law for the filling of vacancies arising from other causes.<sup>11</sup> This arrangement is criticized because an authority like the council selects the successor to an official originally chosen by the electorate. The persons who control this organ may belong to the same group or party with which the removed official was associated. Of course, if the recall is applied to appointive positions, selection of a successor should be left in the hands of the original appointing authority.

In the event that provision be made for a second election, a question to be decided is whether the removed official shall be eligible to compete therein. Logically, this question should be answered in the negative since the election is held only because a majority of the voters already have favored removal. However, some municipalities permit the deposed official to participate and automatically place his name on the ballot.<sup>12</sup> Under this arrangement, an

<sup>10</sup> Los Angeles shifted to this second plan about ten years after it installed the recall.

<sup>11</sup> In San Francisco, the Board of Supervisors (council) chooses a successor to the mayor if the latter is removed; the mayor fills all other posts which become vacant because of recall proceedings.

<sup>12</sup> The reasons which might be advanced in justification of this questionable practice are

incumbent who has been voted out of office by a majority may be re-elected by a mere plurality. In July, 1930, Mayor Charles Bowles of Detroit was removed by majority vote at a special recall election. He was a candidate to succeed himself at the election held in September to fill the vacancy, but lost out by a narrow margin to Judge Frank Murphy in a four-cornered race.

Miscellaneous legal restrictions are likely to be included in provisions for the recall. A fairly common practice is to prohibit resort to the recall until an official has served for a specified minimum time, such as three months, six months or one year. In some municipalities the recall may not be invoked against an officer more than once during the term for which he was elected. Again, an increasingly large number of signatures may be required for each successive attempt to recall the same official. Sometimes a person who has been recalled is disqualified for a short time from seeking the same office or from holding any other local position, e.g., for a period of one or two years.

In addition, there are various detailed regulations concerning the circulation, signing, and checking of petitions,<sup>18</sup> the time within which the recall election must be held, and the steps to be taken in order to insure adequate publicity. It sometimes is provided that the officeholder will be reimbursed for legitimate campaign expenses if the recall movement against him fails. Practically all of the regulations mentioned in this and the preceding paragraph are designed to protect officials and the public against abuses of the recall privilege.

**Claimed Advantages of the Recall.** The chief argument in favor of the recall is that it enables the voters to safeguard themselves against misgovernment by removing undesirable public servants before the expiration of the terms for which they were chosen. Continuous responsibility is substituted for the intermittent accountability which is associated with regular elections at prescribed intervals. The people no longer are solely dependent on the action of councils, courts or other agencies of government for the making of needed dismissals. They can resort to direct action at all times. An effective remedy is available for the correction of mistakes which may have been made in the selection of persons entrusted with the exercise of governmental powers.

A derivative advantage is that officials will show more genuine concern for the interests of the public. The ever-present possibility of being recalled is calculated to discourage officeholders from using their powers to exploit the people. It may inspire them to exert their best efforts to render satisfactory service. No longer will it be safe to assume security in office until the next election and to pursue selfish interests or serve acquisitive minorities with impunity. The people may apply "the big boot" at any time.

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as follows: (1) the lapse of time between the first and second elections may cause voters to undergo a change of mind; (2) the removed officer may seem less objectionable than the candidates who later are nominated to succeed him, and (3) a light vote may have been cast at the first election.

<sup>18</sup> A few municipalities prohibit circulation and require signers to go to a central place where petition papers are kept; occasionally, persons may sign either for or against the recall.

With a weapon such as the recall available, the people will be able to take advantage of the benefits to be derived from lengthening terms of office, granting adequate powers, and concentrating authority. Outmoded and cumbersome governmental organizations based on checks, balances, and separations of power may be discarded in favor of streamlined types of government which promote efficient and effective action. The legal strait-jackets in which officials have been placed may be removed without running the risk that authority will be abused.

Finally, it has been claimed that establishment of the recall will stimulate interest in public affairs and provide the voting population with an incentive for keeping an eye on the doings of public officials. Possession of a potent remedy for misgovernment tends to eliminate the apathy which so many voters develop because of the feeling of helplessness in the face of bad political conditions. A keener sense of responsibility on the part of the electorate will result from conferment of the recall privilege.

**Asserted Disadvantages.** Opponents of the recall view it with distaste for a variety of reasons. They fear that the proposed cure for misgovernment will prove worse than the disease and argue that the theoretical advantages of this reform seldom will be realized in practice.

One of the primary objections to the recall is that it will be used for personal and partisan purposes and not merely to remove unfaithful, incompetent, or disobedient officials. Individuals, parties, and factions meeting with defeat in their attempts to gain control of the government at regular elections will invoke the recall either to harass, embarrass, inconvenience, and undermine confidence in officeholders or in the hope of persuading the electorate to reverse an earlier decision. Officials who have functioned in a creditable manner are very likely to be attacked unfairly and viciously for selfish reasons of one type or another.

Another contention is that the constant threat of the recall tends to produce an undesirable timidity and lack of courage on the part of officials. Controversial issues are likely to be side-stepped; avoidance of criticism rather than sound judgment will become the basis of official action; and militant pressure groups will gain an undue influence over public affairs. The recall is a very convenient weapon in the hands of persons who are experts in the tactics of intimidation.

A third basis of opposition to the recall is the conviction that an election is an inappropriate means of determining whether or not an official deserves to be removed from office. It is a poor substitute for a thorough investigation, a hearing, the careful weighing of evidence, and the reaching of a decision after due deliberation. Recall movements may be instituted by a minority of individuals for whatever reasons they consider sufficient and the campaign which precedes the eventual election almost invariably is marked by the hysteria, the appeals to emotion and prejudice, and the resort to political maneuvering which characterizes elections in general. The removal of an official is too serious a business to be decided on under such conditions, espe-

cially since more adequate methods are available. However able or sincere the voters may be, they are in no position to pass sound judgment on the issues involved in recall proceedings.

The asserted disadvantages so far presented are said to have the adverse effect of discouraging competent persons from seeking office. Public service becomes too precarious and too nerve-wracking to appeal to men of ability. Injustice is likely to be done to persons who have the courage of their convictions and refuse to bend and bow in response to every pressure that is brought to bear upon them.

Two other points against the recall are that it places one more burden on the back of the already overloaded voter and adds to the expense of government. The assignment of too many functions to the electorate weakens rather than strengthens democratic political institutions. As for the expense item, opponents dislike to see money spent on projects which, in their opinion, produce harmful rather than beneficial results.

**Experience With the Recall.** Complete information concerning the use of the recall in the cities of this country is lacking, but a number of special studies, together with isolated reports on elections here and there, furnish sufficient material to sustain certain general observations. The most thorough investigation to date is that of Bird and Ryan with respect to results in California.

The general finding shows limited use, especially in consideration of the large number of elective and even appointive positions to which the recall is applicable. During the period from 1903 to 1928 the total number of recall movements in California municipalities amounted to 151, an average of slightly over six per year. Of these, 109 resulted in elections involving a total of 253 officials. About 42% of the latter were recalled from office. During the last decade of the period under consideration the recall was invoked more frequently than ever before. The removed city officials included nine mayors, one city manager, three city clerks, six school directors, three municipal judges, and 83 councilmen.<sup>14</sup>

It is doubtful if the recall has received such extensive use in other states as in California, but available information is too limited to warrant a positive assertion to this effect. Among the more conspicuous cases of removal by recall are the following: the mayor of Los Angeles in 1909 and 1938; the mayor of Detroit in 1930; the mayors of Seattle in 1910 and 1931; the entire council of Pasadena in 1931; the city manager of Long Beach, California, in 1922 and all members of the council in 1934; the council of Asbury Park, New Jersey, in 1935; and six members of a council of nine in Fort Worth, Texas, in 1938. Equally prominent recall movements have met with failure from time to time, e.g., the defeat of efforts to remove the mayor of Denver in 1924 and the mayor of Los Angeles in 1932. A recent example was the unsuccessful attempt to oust Mayor R. D. Lapham of San Francisco in 1946.<sup>15</sup>

<sup>14</sup> F. L. Bird and F. M. Ryan, *op. cit.*, Chapter X.

<sup>15</sup> J. M. Selig, "San Francisco Upholds Mayor," *National Municipal Review*, October, 1946, Vol. XXXV, No. 9, pp. 465-469.

Experience indicates that in general the evil consequences anticipated by opponents have failed to materialize on any large scale. Abuses undoubtedly have occurred. Thus the Denver recall movement of 1924 against Mayor Stapleton seems to have been inspired by disgruntled politicians<sup>10</sup> and the San Francisco proceedings in 1946 apparently were set in motion by a former city official whom the mayor had removed from office. Cases of this type are offset by numerous others in which there appear to have been adequate grounds for bringing the question of removal before the public.

Recall campaigns often have been marked by pettiness, unfairness, emotional appeals, and the exploitation of prejudices. Although unjust removals sometimes have occurred, the electorate has upheld the incumbent about as often as it has removed him from office. Unfortunately, opinions differ concerning the question of justice or injustice in particular cases and consequently the outside observer has to be wary about reaching conclusions. Probably the voters have used as good judgment in deciding for or against recall as in selecting officials in the first instance.

As for the claim that the existence of the recall produces timid and spineless officeholders and discourages good men from seeking office, about the only safe observation that can be made is that conclusive evidence pointing one way or the other is lacking. Matters of this type involve too many intangibles to permit of accurate measurement. The same comment is pertinent to the contention of proponents that the recall causes officials to show more concern for the public welfare, stimulates greater popular interest in governmental affairs, and develops a keener sense of responsibility on the part of the electorate.

The recall obviously strengthens the hand of the people by making officials continuously responsible to the governed masses. Like any other weapon, its ultimate justification depends on the use to which it is put. On more than one occasion its utility has been demonstrated.

Perhaps the greatest value of the recall lies in its psychological effect. The voters gain confidence in government from knowing that abuses of power are subject to correction and officials realize that in principle at least the people are the masters of the political scene.

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## CHAPTER XV

### THE URBAN POLITICAL PROCESS

#### *Outline*

**Political Parties and Machines**

**National Parties and Municipal Politics**

**Party Organization**

**Political Clubs**

**Political Bosses**

**Foundations of Bossism**

**Personality of Bosses**

**Stock-in-Trade of Bosses**

**Pressure Groups**

**Sources of Information**

NEWSPAPERS often headline the actions of a mayor, a city manager, a commission, or a council in regard to current municipal problems. The press also keeps the public informed to some extent about the words and deeds of various other officials. Since formal responsibility for final decisions concerning questions of policy and administration rests upon these legally established authorities, it is desirable that full publicity be given to the part they play in city government.

Unfortunately, what goes on behind the scenes is seldom revealed to the public. Why was a certain decision made? What influences were involved in the process of decision? Were the officials concerned subjected to pressure, and if so, from what quarter? What is the real rather than the merely formal process of government? It is important to understand the forms of government and the powers, duties, and relationships of various officials, but it is at least equally essential to be aware of the social pressures which are brought to bear on the formal machinery.

Most potent of all the agencies of invisible city government are political parties and machines, political bosses (big and little), and pressure groups of various descriptions. A consideration of their organization and techniques contributes to comprehension of the urban political process. Attention also should be directed to the ways and means of providing officials and the public with information in regard to municipal affairs.

#### POLITICAL PARTIES AND MACHINES

A political party is an organized association of individuals presumably united by common convictions concerning basic political issues and continu-

ously striving to elect its members to public office in order to put its program of governmental action into effect. Organization, durability, the immediate objective of direct management of the government, and the controlling purpose of realizing avowed principles and establishing favored policies are the distinguishing characteristics of the party.

In striving to gain control of the government political parties nominate candidates and prosecute campaigns for their election. These activities afford a practical and conclusive test of party existence. Legal recognition of a party, which is generally a prerequisite to the conduct of primaries or conventions and to the assignment of a place on the official ballot, depends in most jurisdictions on a certain minimum voting strength which usually is expressed in terms of the percentage of the total vote cast for all candidates competing for a specified office at some previous election.

An association which makes no effort to place its own members in office falls short of being a political party—no matter how active a part it plays in the urban political process, no matter how effective and permanent its organization, and irrespective of the degree of its concentration on public affairs. Examples are the League of Women Voters, Taxpayers' Associations, and most Citizens' Leagues. Associations such as these may endorse the candidacies of various persons, work for their election, and urge the adoption of a variety of measures, but they remain outside the category of political parties as long as they refrain from regularly presenting a slate of *their own members* as candidates for governmental positions.

At times it may be difficult to decide whether a particular association deserves to be ranked as a party. It is equally troublesome to distinguish between a party organization and a political machine. A machine may be defined as "the political organization of a faction within the party,"<sup>1</sup> but this definition is too brief to be entirely adequate. Examples of machines within parties are the Democratic Tammany machine in New York County, the Hague machine, likewise Democratic, in Jersey City, and the Republican machine of Philadelphia.

The term "machine" might be applied to any well-disciplined and extremely efficient party organization, regardless of the foundation on which it is built and of the purposes to which it is devoted.<sup>2</sup> As a rule, however, this label is used to denote an effective organization which lives on public office and the spoils derived therefrom and exists to further the interests of those who dominate it rather than to advance the cause of the party of which it is nominally a part.

There is plenty of evidence to support this view concerning the nature of a machine. Typical political machines in the United States function under party labels, select their own candidates for office, and profess interest in principles and policies, but their primary objective, judging by their records

<sup>1</sup> T. W. Cousins, *Politics and Political Organization in America*, (New York, The Macmillan Co., 1942), p. 306.

<sup>2</sup> Ed Flynn, boss of the Bronx, uses the term "machine" in this sense and distinguishes between good and bad ones on the basis of the character of their political activities. He admits that the distribution of patronage has been an extremely important factor in enabling him to retain his position as "leader." See his *You're The Boss* (New York, The Viking Press, 1947), especially Chapter 17.



to date, is to use political power as a means of benefiting their controlling personnel. Concern for the welfare of the community in which they operate is chiefly a matter of political expediency.

The members of a machine are the big boss or bosses, the lesser bosses, and their loyal assistants and workers. Practically all of them seek self-aggrandizement in some form in connection with the operations of that greatest of all businesses, the government. The ordinary voter generally belongs to a political party and often supports a machine, but he is not a member of the latter unless he is one of its regular workers. A determining factor in distinguishing between machine politicians and politicians of a higher type is the use which is made of political power.<sup>3</sup> Anyone who makes politics a career is properly described as a politician, but there is a distinction between those who are working primarily for their own special benefit and those who, although earning a living through political activity, are to a large extent motivated by the desire to promote the welfare of the people in general. The machine politician serves people in a private and personal way in order to gain control of the votes which enable him to pursue his exploitative activities. Politicians of a better type also tend to the wants of the people, but they do so with the interests of the public in mind and endeavor to render services for the benefit of the community as a whole rather than for the advantage of particular persons. There probably are few politicians who really have specialized in serving the general public to the exclusion of service in behalf of individuals. Nor is it likely that there are very many who are completely indifferent to the public welfare.

#### NATIONAL PARTIES AND MUNICIPAL POLITICS

In American cities the parties which are almost invariably active are the Republican and the Democratic. Of the minor parties which participate more or less regularly in national and state elections, only the Socialist has been successful to any marked extent in challenging the near-monopoly of Democrats and Republicans in the urban field. Milwaukee, Wisconsin, Bridgeport, Connecticut, and Reading, Pennsylvania, are among the few American cities which have had Socialist administrations.

Strictly municipal parties seldom have been organized, but there seems to be a tendency in this direction at the present time, chiefly in cities which have adopted the council-manager plan of government. An outstanding example of such a local party is the City Charter Committee of Cincinnati. This development may be attributed to a growing realization on the part of citizens who sponsor reforms that good government depends not only upon improved devices, but also upon the continuous and energetic activity of those persons in a community who are sincerely interested in raising the standards of governmental service.

There are several reasons for the projection of national party lines into the urban political arena. In the first place, the strength of any party and its

<sup>3</sup> Other bases of distinction will be discussed in a subsequent section dealing with political bosses.

chances of success in national and state elections depend primarily upon the effectiveness of its organization in the election precincts. There are approximately 135,000 of these in the United States. Party workers in these precincts, which ordinarily contain from 200 to 800 qualified voters, come into close personal contact with the voting population and stand the best chance of delivering the all-important vote in primaries and elections. Precinct committeemen are the backbone of a political organization. With a steadily increasing urban population, already amounting to nearly 60% of the total, no national party can afford to overlook the city vote. Secondly, participation in local primaries and elections during the interim between presidential years helps to keep the party organization on its toes and in good fighting trim. A third reason is the numerous positions, elective and appointive, in the field of city government. These, together with the spoils of municipal office, swell the total of rewards available for distribution among faithful and effective party workers. Fourthly, as pointed out in a previous chapter, the cooperative action of national, state, and local governments is becoming more and more necessary for the satisfactory solution of many problems of public concern. A party in control of the several levels of government is in a better position to carry out the national, regional, and local aspects of its general program for promoting the welfare of the people. Finally, the loyalty of many voters to national parties contributes to the ease of enlisting their support in local elections.

It is unlikely that national parties will cease to participate in the municipal political process. However, unless they pay more attention to city problems and improve their local records, they may be forced to compete against municipal parties in a growing number of communities. Moreover, as is now the case in so many cities west of the Mississippi, an increasing number of voters, even though they remain loyal to their parties on other occasions, probably will disregard national party lines in selecting city officials.

#### PARTY ORGANIZATION

The general pattern of party organization is the same in most cities of the United States, especially the larger ones, but the details vary from place to place. As a rule, the more effective and elaborate organizations are found in the larger cities. In some of the smaller municipalities there is little or no organization distinct from that which prevails in the county in which the municipality is located. Generally speaking, organization in the smaller cities is characterized by informality, simplicity, lack of uniformity, and emphasis on personal considerations.

The controlling structural principle in party organization is a hierarchy of committees ranging from the basic precinct committee to a city-wide committee at the peak of the urban organization. In some municipalities, the ward, rather than the precinct, is the primary unit. If election precincts are subdivisions of wards, ward committees usually are established between the city and precinct committees. In many of the smaller municipalities there are no wards.

Nearly every committee has a chairman, and city and ward committees usually have a vice-chairman and one or two officers, such as secretary and treasurer, as well as one or more auxiliary sub-committees. If the membership of a committee be large and unwieldy, as frequently is the case with the city committee in a large metropolis, a smaller executive committee is appointed, very often by the city chairman.

The precinct committee almost always is small. It usually consists of one or two partisans. Even if there be two or three members, one of them is the recognized precinct leader or captain and the others serve as his chief assistants or lieutenants. Political parties have found that single leadership is the keystone of successful operation.

The members of committees are selected in a variety of ways. Precinct committeemen ordinarily are chosen by the party voters in direct primaries or caucuses, or are appointed by the ward leader. Whatever the procedure, the actual choice is made by the ward leader, since his support is the determining factor. Ward committees are selected by the rank and file in some jurisdictions, but more often they are composed of precinct committeemen who serve *ex officio*. In some municipalities, the city committee is elected by the party voters; in others, its members are the precinct committeemen; and in many instances it is composed of representatives of the ward committee, either the ward leaders or persons selected by the ward committees from their own membership. Overlapping of the personnel of lower and higher committees is one of the means of producing cooperative and coordinated action. Formal authoritative control of one committee over another is seldom provided. Each committee chooses its chairman and other officers.

The partisans who serve on committees, act as committee chairmen, and hold other positions are not necessarily the most influential politicians. Often, the politically-dominant persons in the city and its subdivisions, except in the precinct, are found outside the group of party officials. The former make decisions and issue orders which the latter obey if they wish to retain their positions.

The organization in cities is merely part of the mechanism which the national parties have established. Committees are almost always created for every area from which one or more officials are chosen by popular vote. Thus, within each state, there are township, county, assembly district, senatorial district, and Congressional district committees in addition to the central state committee which tops the state organization. Above these state agencies, with the entire nation for their area of operation, are the national committee and the Senatorial and Congressional campaign committees. All of these committees have chairmen, other officers, and auxiliary committees of various types. Although the relations between the many committees of this pyramidal structure are loosely defined, party loyalty, interlocking personnel, effective leadership, and the judicious distribution of party funds, particularly from the top down, produce the necessary cooperative action. However, harmony does not always prevail within the

party ranks, and factional fights for control of the organization are by no means uncommon.

The party organs so far described are permanent in character and function whenever there is work to be done in order to advance the interests of the party. They are most active when the time comes for conducting nomination and election campaigns, but during the intervals between elections and primaries they are charged with the task of increasing party membership, strengthening organization, making preliminary arrangements for conventions, raising money, getting voters to register, providing publicity beneficial to the party, and serving the voting population in a variety of ways. The most successful precinct committeemen and other local leaders are on the job day and night, if necessary, rendering services which pay dividends in the form of votes on election day.

Conventions and primaries are the temporary organs of party government. The former are held in order to nominate candidates, formulate and adopt party platforms, and enact rules governing party organization, whereas the latter are utilized to select candidates, elect party officials, and choose delegates to conventions. Although partisan primaries play an important part in the urban political process, city conventions are held in comparatively few municipalities.

General descriptions of urban party organizations are more or less inadequate because of the variations in detail from city to city. For this reason, it seems desirable to present a more specific portrayal of the organization in particular cities.

The best known urban organization of long standing is that of the Democratic party in the borough of Manhattan, New York City, popularly referred to as Tammany because of its close association with a benevolent and fraternal society known as the Society of Saint Tammany. It is one of the five Democratic organizations in the greater city, separate organizations existing in each of the boroughs, and although it usually has been the dominant force within the Democratic party in the New York area, its leadership has been seriously challenged, if not undermined, in recent years, especially by the Democratic leaders of Brooklyn and the Bronx.

State assembly districts (16 in Manhattan) serve as the basis of the Tammany organization, but many of them have been divided for organization purposes. The Democratic voters in each district choose a District General Committee. Its members are county committeemen and its size is established by the rule which determines representation on the County General Committee, viz., two members per election district (precinct) plus one additional member for every 20 votes cast for the Democratic gubernatorial candidate in 1946. Each district committee selects at least one *district leader* and one *co-leader*—a man and a woman. In the divided districts more than two are chosen. The leaders and co-leaders now (1948) number 78. Each leader appoints two *captains*, a man and a woman, for every precinct within his district. These captains select their own assistants, challengers, watchers, and other helpers.

Above the district organization is a County General Committee for New York County which consists of the entire membership of all of the district committees. This committee selects a chairman, vice-chairman, secretary, and treasurer, and establishes various sub-committees, but these officials merely possess a nominal authority. Since the County General Committee is a large and unwieldy body (approximately 17,000 persons in 1947), its executive functions are delegated to a powerful County Executive Committee on which each district is represented by the *district leaders* and *co-leaders* who are chosen in the manner described in the preceding paragraph.

In 1948 this Executive Committee was composed of 78 members. The actual power of direction of the entire county and district organization is wielded by the *county leader* who is selected by the *district leaders* and *co-leaders* comprising the County Executive Committee. This leader, the boss of Tammany, is advised by the other district leaders and by public officials and prominent citizens who belong to the Democratic party.

In the Bronx, the party voters of each election precinct elect committeemen to serve on the County Committee. The county committeemen of each assembly district comprise a district committee which chooses the assembly district officers, including a chairman, secretary, and two executive members, a man and a woman. These two executive members are the *leaders* of the assembly district and they appoint a male and female *captain* for each election precinct within the district. All of the executive members (assembly district leaders) are members of the Bronx County Executive Committee which also includes the County Committee's chairman, secretary, and treasurer and the chairman of the Executive Committee, who is the real power within the Executive Committee and the leader or boss of the Bronx.<sup>4</sup>

Organizations similar to those of the Bronx and Manhattan (New York County) are found in the other counties in the New York City area. The five county leaders provide the leadership of the Democratic party in the city.

The basis of party organization in Chicago, whether Democratic or Republican, is the 50 wards into which the city is divided. In each ward the party voters elect a ward committeeman (ward boss) for a definite term, and this committeeman selects the precinct captains. There are several thousand of these in the entire city. The City Committee is composed of the 50 ward committeemen, but the voting strength of these ward representatives is proportioned on the basis of the party vote in the wards at the last gubernatorial election. Factional fights have been frequent within the Chicago party organizations, e.g., the Deneen-Lundin versus Thompson conflict prior to 1930 and the Horner versus Kelly-Nash clash in 1936. Ordinarily the real controlling power in both parties has been exercised by a small group of men rather than by a single dominant boss.

In Philadelphia the electoral division (precinct) and the ward are the territorial areas upon which the Republican organization is based. Every year the Republican voters in each division meet in caucus to select a presi-

<sup>4</sup> E. J. Flynn, *op. cit.*, pp. 9-10.

dent, secretary, and treasurer, and every other year in a direct primary they choose two committeemen (division leaders or ward committeemen) to serve on the ward committee. Of these two committeemen, one is usually the real leader.

There are 52 wards and each has a Ward Executive Committee which is composed of the division leaders within the ward. Above the ward committees is a Central Campaign Committee composed of 52 members, one per ward.<sup>5</sup> The ward representatives on this committee are chosen annually by the ward committees and are either the ward leaders, as generally is the case, or their hand-picked agents. Since the rank and file select the division leaders and the latter the ward leaders, the organization appears to be democratic in character, but such is not actually the case because the ward leaders almost always control enough votes to be able to dictate the outcome of the formal process of selection. In Philadelphia, as in other cities, party government is in fact oligarchical or autocratic rather than democratic in nature.<sup>6</sup>

#### POLITICAL CLUBS

In many cities, large and small, political parties have formed clubs or associations of partisan voters to stimulate and sustain interest in party affairs. These clubs, which often are named after great party leaders, e.g., the Washington Republican Club or the Jefferson or Jackson Democratic Club, maintain permanent headquarters at which members gather for social and other reasons. Some of them provide a variety of recreational facilities, whereas others merely operate a bar and furnish tables and chairs for lounging, which is sufficiently arduous recreation for some members. Local political leaders usually can be found at the clubrooms at some time during the day or night. Many of them maintain definite office hours for both their own convenience and that of their subordinate workers and the voters whom they serve.

The clubs sponsor dinners, dances, card parties, and other social activities, sometimes do charitable work, and promote the discussion of political matters in which the party may be interested. It is difficult to estimate the extent of their influence in strengthening the party, but their continued existence indicates that party leaders deem them worth while. Some voters admit that their interest in a particular party dates from their first visit to a political club. Since the clubs are organized in wards or other local districts and bring voters into direct personal contact with influential politicians, it is altogether likely that they are an effective means of increasing the number of reliable partisans who are willing to work as well as to vote for their party.

#### POLITICAL BOSSES

An understanding of party government requires more than a mere famil-

<sup>5</sup> The city and ward committees include the candidates for ward, city, and county offices as *ex officio* members.

<sup>6</sup> The "Old Regular" Democratic machine of New Orleans is governed by a caucus of the leaders of the city's 17 wards. This caucus is self-perpetuating. Precinct captains are chosen by the ward leaders. See W. V. Holloway, "Always Fun in New Orleans," *National Municipal Review*, Vol. XXXVI, No. 8, September, 1947, pp. 439-443.

ilarity with formal organization. Behind the latter are invisible forces which dominate the political scene and determine the actual course of party activity. Parties, like governments, are subject to the influence of pressure groups which function in given communities; a political boss or a group of bosses may issue orders which subservient party officials instantly obey; the bosses themselves may be the creatures of certain vested interests; and parties, party officials, bosses, and pressure groups are necessarily products of the social process which is characteristic of the economic and social system prevailing in an urban community. A knowledge of bosses and the nature of their operations casts considerable light on the ramifications of city government in action.

The distinction between bosses and other persons who are politically powerful is essentially a matter of motives, methods, and sources of power. In the case of the boss, the impelling motive is self-aggrandizement in one form or another. He may love power and prestige for their own sake, he may seek monetary profit, he may crave a spot in the public lime-light, or he may become involved in politics for a variety of other reasons, but, apparently, he never pursues his profession for the sole or the primary purpose of promoting the general welfare. To him, the well-being of the public is at best a matter of secondary importance which, although not necessarily to be ignored, cannot be permitted to block the realization of personal ambitions. As to method, the boss is definitely Machiavellian in his attitude. Ordinarily, he will resort to any means, fair or foul, legal or illegal, which will enable him to achieve his ends.

**Foundations of Bossism.** One of the foundations of the political power of a boss is his readiness to render service to persons or groups of persons who need assistance or who are seeking special favors of one description or another. Instead of serving the community by looking out for its interests, which is the kind of service rendered by the superior type of politician, the boss concentrates on the satisfaction of personal desires which are essentially selfish in character. He deals with many individuals one by one, directly or indirectly, on a strictly personal basis, rather than with the many as a community striving for the betterment of all. Services of this personal type are exchanged for the votes which the boss needs in order to gain his objectives.

A second foundation of political bossism is the large proportion of seekers of special privilege in most communities. The boss "does what the people want", but too many of them want favors and concessions of various types. By trading votes and/or financial support for favors or in anticipation of favors, seekers of special privilege make it possible for the boss to gain or retain control of the government and thereby fulfill the promises which he has made. The seekers of special privilege are found in all classes of the population—the wealthy and the poor, the intelligent and the ignorant, native Americans and aliens. Demands for favors at public expense are largely due to the profit-making motive, economic insecurity, and social

maladjustments in combination with a lack of community-mindedness on the part of the dispensers and recipients of benefits.

Political machines furnish the greatest amount of personal service and achieve their maximum power in those sections of a city in which there are numerous people who are unable to manage their own affairs. In sections inhabited by the poor, the ignorant, and the socially delinquent, the boss undoubtedly renders some service of the social welfare variety, but it is alleviative rather than remedial in character and involves the principle of special privilege in return for political support.

There are many other factors which contribute to the development of bosses and other politicians. For one thing, a cumbersome and complex governmental mechanism creates the necessity for an integrating force which can bring order out of chaos. It is easier and more convenient for persons to transact business with a boss than to deal with the officials of a government which is characterized by a division of power and responsibility, or to contact the authorities of the many governments which operate in a given area.

The long ballot also strengthens the hand of the boss because it places an undue burden upon the voters. Someone has to see to it that candidates are nominated for the numerous elective offices, most of which are of minor importance, and voters, unable to keep track of the many nominees, cast their ballots blindly on a straight-ticket basis. Moreover, as pointed out elsewhere, the most commonly used methods of nomination and election simplify the task of the boss by making it difficult to challenge his power effectively.

Then, too, failure to place governmental service on a career basis preserves an important part of the boss's stock-in-trade, viz., jobs. Well-devised merit systems, although often circumvented by ingenious politicians, are nevertheless an obstacle which bosses view with distaste.

The number of favors and special privileges which bosses are able to grant also is increased by the American tendency toward over-regulation by law. In particular, laws of a sumptuary character which represent the views of a vociferous minority rather than those of the governed masses afford excellent opportunity for purchases and sales in the political market. The boss would find survival difficult if he had nothing to sell or trade for votes and if the public were unwilling to buy.

Finally, political bossism is to some extent attributable to blind partisanship and to the political apathy of numerous potential voters. The voter who always can be depended on to support the party and the stay-at-home citizen who ignores primaries and elections aid the boss by reducing the size of the controlled vote which is necessary for victory.<sup>7</sup>

**Personality of Bosses.** Given the conditions which produce bosses, what kind of individual is most likely to become a boss? Those who

<sup>7</sup> For an excellent discussion of ways and means of taking the boss out of politics see C. Edison, "Let's Quarantine the Bosses," *National Municipal Review*, Vol. XXXVI, No. 1, January, 1947, pp. 5-10.



have studied the boss in his habitat agree that the "typical boss" is a fictitious person and that real bosses are usually products of the environment in which they operate. In other words, the general character of the district determines the type of boss, especially so in the case of precinct and ward leaders, but to a lesser extent in the case of city bosses who almost always have risen from the ranks and bear the imprint of the neighborhood in which they commenced their careers.

Although no single description fits all bosses, certain traits are common to most of them, whatever the class from which they come. One characteristic is good faith in regard to promises. A politician who makes and breaks promises is unlikely to become a boss and certainly will not remain one for any length of time. As Tom L. Johnson remarked, "—a political boss is a man whose word is his capital and it must be absolutely good."<sup>8</sup>

Among other characteristics which seem essential to a successful career as boss are great energy and a capacity for hard work, perservance, a liking for people and the ability to get along with them, skill in judging men and their wants, resourcefulness, organizing ability, loyalty, love of power, the ability to solve problems, and in the pursuit of their objectives, an indifference to abstract principles, community welfare, and high standards of ethical conduct. In short, bosses are power-loving men of strong character, ruthless as to method, and adept at handling people.<sup>9</sup> As might be expected, these qualities are most marked in the bosses, such as the city boss, who reign over extensive areas and have risen to the top after a rough and tumble competition with bosses of similar stature.

In personal habits, bosses are ordinarily no different than the average man, being neither saints nor devils. Most of them are self-made men with limited formal education who have been raised by families belonging to the low-income group. They generally have had a varied business experience and their occupational background indicates that no particular occupation offers a peculiar advantage to an individual who contemplates the career of political boss.

The rise to power of a boss is a story of hard work beginning at the bottom of a ladder which is difficult to climb. Most bosses get their start by serving an apprenticeship which calls for the performance of routine duties at election time. They may distribute campaign literature, run errands, transport voters to the polls, act as challengers, watchers or checkers, help count ballots, and perform other tasks of a rather simple character. If they prove reliable, greater responsibilities are placed upon them, and if they take advantage of their opportunities, they soon develop a wide circle of acquaintances, learn the ropes, and eventually manage to control an impressive block of votes.

Gaining the confidence of those already in the saddle, and demonstrating

<sup>8</sup> *My Story* (New York, Viking Press, 1911), p. 86.

<sup>9</sup> Luther Gulick, president of the Institute of Public Administration in New York, recently observed: "... Every boss I have known was an unusual man—outgoing, dynamic, decisive, generous, loyal to his friends, thoroughly dependable, informed, inventive, well-coordinated, and eager to do what the people really want." See "The Shame of the Cities—1946," *National Municipal Review*, Vol. XXXVI, No. 1, January, 1947, pp. 18-25, at p. 22.

their ability to deliver the goods in primaries and elections, they outclass their competitors and become precinct leaders. Ward leadership is the next goal and its attainment also is dependent on outstanding achievement. Only the best of the ward leaders stand a chance of becoming the city boss, again on the basis of their record in winning primaries and elections, and the record must be good because the city boss usually is chosen by the very ward leaders who are competing for this all-important post.

Under the law of the political jungle, only the most fit survive competition, and those who have become bosses, big or little, must continue to demonstrate their fitness or be dethroned. Although skill and experience are unquestionably of major importance, luck and circumstances sometimes play a part in the evolution of a political boss. Now and then a retiring boss dictates the choice of his successor, and occasionally a successful revolt is staged by the right hand man of an existing boss. However, without the support of ward and precinct leaders, men who have attained power in exceptional ways cannot long retain it. There are few short-cuts to domination in the field of politics.

**Stock-in-Trade Of Bosses.** The boss is a specialist in granting favors and special privileges in return for the political support which enables him to gain control of the local government and wield the powers which are essential to the fulfillment of promises concerning concessions of one description or another. Governmental authority is the chief source of the supplies which are furnished by the boss to seekers of special privilege. Although bosses conduct this business on the largest scale and in the most effective manner, lesser politicians also engage in the practice to some extent, even in communities which scarcely can be described as boss-ridden. A description of the kinds of favors and special privileges and the technique of distribution, based on the known facts concerning the activities of expert bosses and machines, will contribute to an understanding of what occurs behind the scenes in a great many American cities to a degree which varies from time to time and from community to community.

Professor Salter has summarized the situation in these words: "In the last analysis, the political party organization is a middleman. It achieves supremacy by granting small favors—economic, legal, and psychological—and it sells this political power to the controlling economic interests. As for the majority of individuals, it is impossible to have a political right without economic security. To them the vote is more a commodity than either a right or an obligation."<sup>10</sup> The petty favors which are received by the ordinary voter are too numerous and varied for complete enumeration, but a few samples will indicate their general character. A ton of coal, a supply of food, employment or payment of a month's rent in the case of the needy, a word with the prosecutor and the local magistrate to secure the release of social delinquents, a minor governmental position, excuse from jury duty,

<sup>10</sup> *Boss Rule, Portraits in City Politics* (New York, The McGraw-Hill Book Co., 1935), p. 70. By permission of the publisher.

the fixing of a traffic ticket, or the reduction of a tax assessment—these are the benefits for which grateful persons exchange votes. Having the votes which insure control of the government, politicians are in a position to transact business involving far greater stakes.

A very important phase of political business is the appointment of dependable partisans to governmental positions. The boss sees to it that key party workers, their families, and other reliable supporters are taken care of in some way or other. Vote-getting machines are built on the distribution of patronage.<sup>11</sup> Placement of the "right persons" in office through winning elections and by making judicious appointments obviously is necessary if the powers of government are to be exercised in a manner suitable to the purposes of the boss.

The marketable goods of the politicians in control of a government may be classified broadly as follows: (1) protection against or exemption from the enforcement of laws and regulations; (2) privileges within the power of government to grant or deny; (3) contracts for the supplies, materials, and services which are needed by the government in the performance of its functions; (4) the use of governmental power for the advantage of favored individuals and groups; (5) inside information concerning future plans and actions of the government; and (6) miscellaneous. Since an enumeration of all of the items properly falling within the foregoing categories is out of the question, the explanatory material appearing in the following paragraphs is not offered as an exhaustive survey of the subject.

The authorities of all cities are charged with the responsibility of enforcing laws which prohibit certain conduct or establish standards which must be met by those engaged in specified activities. Many persons, finding these restraints irksome, are ready and willing to do business with those authorities who are in a position to grant the desired relief. For one thing, officials frequently connive with lawbreakers in return for a share of the profits accruing from such enterprises as gambling, prostitution, and racketeering. Not only is tribute paid for protection, but political support is forthcoming in primaries and elections. Criminals and politicians work together in a variety of ways which prove beneficial to both groups. More respectable, but equally unethical, are the exemptions from restrictive regulations granted to persons engaged in legitimate enterprises. Infractions of building codes, tenement regulations, requirements designed to eliminate fire hazards, weights and measures standards and sanitary regulations are overlooked if would-be beneficiaries are willing to pay the price exacted of them, be it a direct money payment, a contribution to a campaign fund, or some other consideration. Minimum standard regulations which are essential to community welfare are effectively used by political blackmailers.

The granting of privileges and concessions by governmental authorities affords another opportunity for profitable transactions by politicians who misuse political power for their own advantage. Such grants, e.g., a utility franchise, a building permit, or a business license, are placed within the con

<sup>11</sup> See E. J. Flynn, *op. cit.*, pp. 224-225.

trol of the government in order to safeguard the interests of the public or because the use of public property is involved, but in many cities they are made for considerations which have little or no bearing on the welfare of the public. Power and light, gas, street railway and bus franchises, especially in the past, often have been the subject of questionable deals between politicians and powerful economic interests. Permits and licenses of various kinds are obtained more quickly and easily if contact is made with the "right persons" in the "right way." Concessions in the form of lucrative appointments are given to individuals who are willing to split fees and share their gains with the "organization men." Contemporary politicians have for the most part abandoned the cruder tactics of their predecessors and have resorted to subtle devices, generally within the law, for the attainment of their ends. By way of illustration, certain revelations of the Seabury investigation in New York City will be summarized briefly.<sup>12</sup>

One of the Seabury charges against Mayor Walker involved a transportation company which was seeking legislation limiting the number of taxicabs operating in New York. The Mayor was charged with accepting 33 bonds, worth about \$26,000, from a *person* who was interested in the company; and an alleged financial agent of the Mayor was accused of receiving \$22,000 more than the market value for stock purchased by a *concern* which was substantially interested in the future of the transportation company's securities. It was further charged that after these transactions the Mayor successfully exerted influence to bring about the passage of legislation which he knew to be desired by certain corporations, in the securities of which the above-mentioned *person* and *concern* were substantially interested.

To obtain pier leases, shipping interests had to apply to the dock commissioner and the Sinking Fund Commission according to the terms of the city charter, but in practice such a procedure was found to be a waste of time. The reported experience of the former North German Lloyd Steamship Company is significant. A friend of Mayor Walker advised it to employ a certain Tammany lawyer and suggested the probable cost of obtaining the lease of a new pier under construction. The services of the lawyer were retained, he was paid a fee of \$50,000, and eventually the lease was granted by the Sinking Fund Commission. Although the attorney refused to reveal the identity of the persons with whom he shared his \$50,000 "melon," investigation of bank records showed that he had withdrawn \$45,000 several days after payment of the fee. A short time later the funds in his possession had dwindled to an insignificant amount.

Two other individuals who gained nation-wide publicity in connection with the Seabury investigation were a former veterinarian and a physician who will be referred to, respectively, as X and Y. X was unusually successful at persuading the Board of Standard and Appeals to grant exceptions to the zoning ordinance regulating the use of land and the height, bulk, and

<sup>12</sup> For an excellent account see N. Thomas and P. Blanshard, *What's the Matter with New York* (New York, The Macmillan Co., 1932). The operations of the Hague Machine in Jersey City are discussed in D. D. McKean, *The Boss* (Boston, Houghton Mifflin Co., 1940).

use of buildings. He served his clients well and secured numerous permits for the construction of gasoline stations, garages, and wet wash laundries in districts from which such uses were barred. X banked over \$1,000,000 and was ably protected by Tammany lawyers during the investigation of his affairs. About all that Seabury was able to secure from him was an admission of fee splitting with persons of undisclosed identity. That these persons were probably politicians is indicated by the known facts in certain similar cases involving a former Tammany leader's law firm. This firm advised clients who sought favorable action by the Board of Standards and Appeals to consult certain attorneys and to pay them specified fees of which the greater part was turned over to some member of the firm. Over \$5,000,000 was banked by the firm during a six-year period. It is not known what proportion of this sum was derived from the fees received by "recommended" attorneys, nor is it known to what extent, if any, the then leader of Tammany was a beneficiary.

Physician Y, a relative of a high city official, was accused of splitting fees with certain doctors who enjoyed a near monopoly in handling cases involving city workers under the State Workmen's Compensation Law. The appointment of doctors who render medical services to injured city employees is a responsibility of the city. Although Y denied that he benefited from city compensation cases, he was confronted with cancelled checks showing that in numerous instances the doctor who was paid a fee by the city wrote a check, several days later, for precisely half the amount—payable to Dr. Y. These facts were termed a coincidence by Dr. Y, but he admitted it to be very strange that coincidences had occurred in so many separate series of cases.

One of the most fruitful fields for profit-seeking politicians is the letting of contracts by city authorities and the expenditure of public funds for a variety of purposes. All cities purchase equipment, supplies, and materials, arrange for the construction of public works by private contractors, and contract with private enterprises for other services. Although numerous legal safeguards have been established to protect the public interest in such matters, ingenious ways and means of evasion have been devised by the political and private interests which are willing and eager to exploit the public for their own advantage.

City charters commonly provide that contracts involving more than a specified sum are to be let to the lowest responsible bidder, but, through trickery, awards can be made to favored firms without apparent disregard of the letter of the law. By *splitting a contract* into a sufficient number of parts, each of which falls below the fixed minimum, the legal requirement of competitive bidding is avoided and the contracts can be awarded at the discretion of the proper municipal authorities. Another device is *unbalanced bidding*. Instead of submitting a bid on an entire project in one lump sum, contractors are told to submit a separate bid on a unit basis for each of the several kinds of work to be done or materials to be furnished, for example, excavation, hauling, concrete construction, bricks, etc. The "pet"

contractor, having been informed secretly as to the actual number of units of each type, so arranges his bids that his average for all will be lowest even though his charges may be highest for work and materials required in large quantities. Other manipulations include: specifications calling for patented materials which only the favored contractor can furnish; insufficient advance notice for preparation of bids, except in the case of the political favorite; inside information to the effect that careless inspection will permit workmanship and materials inferior to the standards specified; and loosely drawn and vague specifications which may discourage the submission of bids by contractors without the proper political connections.

All of the questionable practices so far described require the connivance of both officials and contractors. In the case of *collusive bidding*, however, only the latter may be implicated. By secret understanding all contractors except one submit a high bid on a given project. Some other contractor wins the next award by similar manipulation, and in time each member of the group of collusive bidders gets his share of a lucrative business conducted at the expense of the taxpaying public. If the politicians join hands with the contractors in this type of exploitation, as they are likely to do, the risk of exposure is greatly reduced and all parties concerned, except the public, reap a substantial benefit.

The expenditure of public funds provides opportunities for political graft which are too numerous to mention. Besides contracts for public works, there are transactions pertaining to insurance policies, the sale of bonds, the purchase or rental of land, buildings and equipment, the printing of public reports and other documents, the purchase of supplies and materials, and a variety of other matters, including the deposit of public funds in banks. Profit-sharing in various ways meets with the approval of private interests as well as politicians. When asked why he was willing to serve on the Board of Education of a large city, a newly-elected member who was a printer by profession, made the following significant remark: "It is both a privilege and a pleasure to serve the public on a body which spends millions of dollars a year."

The use of governmental power for the advantage of favored individuals and groups is another means of adding to the resources of politicians. In order to increase the volume of private business transacted by contractors who are friendly to the political boss, competitors are harassed and handicapped by public inspectors who insist on strict conformity to legal regulations. Similarly, if a politician owns an interest in a business—as did a former sheriff of New York County in a company supplying electric lamps and equipment—hotels, department stores, and other enterprises may be coerced into making purchases by threats to enforce compliance with certain ordinances, e.g., fire regulations. Even if pressure be not brought directly to bear, people consider it expedient to patronize the boss's business.

The power to assess property for taxation is commonly used by politicians to gain the support of large corporations and other persons, as is the power to undertake such public improvements as street pavements, side-

walks, curbs, and water and sewer extensions. These are powers in which real estate promoters are keenly interested.

Politicians and their friends often benefit from inside information in regard to the contemplated action of city authorities. This is particularly true in connection with the purchase and sale of land. Knowing in advance that the city intends to purchase land in a certain locality for playgrounds, a park, a school, an airport or some other project, those who have been tipped off buy the property and then sell it to the city at a very profitable price. Since public improvements usually increase the value of adjacent and other nearby property, such property may be bought on the basis of a trustworthy suggestion, held until the improvement has been completed, and then sold to private buyers at handsome profit. Foreknowledge of the terms of franchises and other agreements between cities and public utilities also is valued because of the opportunity afforded for remunerative transactions in the security market.

Finally, mention should be made of miscellaneous practices which help to fill the coffers of those who consider politics a business that should be placed on a paying basis. Among them are the following: the assessment of office-holders, pay-roll padding, withholding of interest on impounded moneys, extortion of tips in connection with the granting of licenses, the sale of public offices to the highest bidder, the unnecessary employment of expert consultants, and the outright theft of public funds. Although once fairly common, the last mentioned practice is no longer indulged in to an appreciable extent. Contemporary politicians prefer more subtle and safer techniques.

All of the practices reviewed in the preceding paragraphs involve what is commonly described as "graft", but in some cases the degree of moral turpitude is considered greater than in others. Recognition of this fact has produced the dubious distinction between "honest" and "dishonest" graft. The latter is exemplified by the acceptance of tribute in return for protection, the theft of funds, or pay-roll padding, and the former by the use of inside information in land deals, or retention of the services of an attorney with the proper political connections in obtaining leases or permits. However, whether honest or dishonest, grafting is conducted at the expense of the general public and is scarcely justifiable in any form.

Although the blame for grafting is usually placed on public officials and politicians, private interests are equally guilty. The former could not sell their goods if the latter were unwilling to buy, and it is difficult to see how a valid ethical distinction can be drawn between the conduct of buyer and seller in a reprehensible transaction. Most seekers of favors and special privileges have no official connection with the government and are engaged in private enterprises which become more profitable if deals can be arranged with public authorities.

Scandals in public business generally attract more attention and are better advertised than shameful manipulations in the private field, but men of experience who have been active in both public and private enterprise assert

that there is no essential difference with respect to the prevailing degree of fraud, corruption, and general dishonesty. As a matter of fact, the mores of a community determine the ethical plane upon which its activities, whether private or public, are conducted. There is no conclusive evidence that ethical standards are lower in public than in private fields of endeavor.

After reading a summary of the ways and means by which the public are exploited, one is likely to conclude that the conditions in American municipalities are indeed bad. Fortunately, the picture that has been drawn represents the situation only in the comparatively few communities which are completely boss-ridden. In the vast majority of cities, there is probably little or no large-scale grafting. The worst practices, apart from the spoils system in making appointments, are of a petty type in which the factor of personal influence and friendship plays a major part. However, it is difficult to ascertain the actual extent to which public power is misused for selfish reasons, and anyone who makes a general observation about prevailing conditions may be "climbing out on a limb" without knowing it. Reports from many of the larger communities in various sections of the country are disturbing, but perhaps there has been a definite improvement during the last three or four decades.

In the opinion of one observer, progress has been made at the same time that ground has been lost. There is less direct thievery; less mugging, kidnapping, and political murder; less direct vote fraud; less franchise hoodling and sale of rights to use city streets, water front, parks, etc.; less raw, sweeping patronage, and fewer sudden, hidden crooked deals. On the other hand, there is "a vast expansion of legal graft arising from the enforcement of regulations and appeals therefrom, from court administration—bankruptcies, foreclosures and estates" and "a rising tide of corrupt practice in the many services performed by private lawyers, accountants, architects, and engineers for private clients who, in the guise of defending their rights, seek special privileges of governmental administrative and judicial agencies." No ground has been gained "in the fundamental moral standards and patterns of behavior."<sup>18</sup>

Since the greater part of the politician's supply of marketable goods depends on control of the governmental machinery, the winning of elections and the making of appointments on a partisan basis are essential to successful political jobbery. Those who hold key positions in the city government must be willing to do as they are told by the would-be political manipulators. That is why politicians worship the spoils system and vigorously oppose the establishment of a governmental career service. A political boss who fails to place his men in office soon loses influence and passes out of the picture rapidly unless he plays ball with his successful competitors. Therein lies the explanation of the unholy alliances between Democratic and Republican machines in so many communities. Each machine may publicly denounce

<sup>18</sup> The quotations and observations about progress and loss of ground are taken from L. Gulick, *op. cit.*, pp. 23-24. He lists gains and losses in addition to those which have been summarized.



the other in spite of secret understandings which result in effective cooperation in looting a city.

From what has been said so far it is apparent that the urban political process may differ from what it seems to be when attention is concentrated solely upon the formal machinery of government. The city charter may authorize the mayor to appoint department heads, members of commissions, and a host of subordinate employees, but actually appointments may be dictated by the persons to whom the mayor owes his nomination and election. Councils are intended to be deliberative bodies, but such deliberation as does occur often may be merely a sham to hide the fact that decisions concerning policy are made elsewhere. Councilmen, chief executives, department heads, and judges, particularly those of the lower courts, usually obey the dictates of their political masters. If they don't, political oblivion is their usual fate.

In cities in which such conditions prevail, it is a waste of time to approach officials in order to get something done. The best procedure is to contact the precinct captain, the ward leader, or the city boss, if there be one. These are the gentlemen to see about street pavements, a new sewer, a traffic light at a school crossing, or any one of the other services which city governments normally render. Every person ought to find out for himself where the final power of decision in his community lies, with the official personnel or with persons outside the formal city government.

#### PRESSURE GROUPS

Those who manage the affairs of a city are continuously subjected to pressures from one quarter or another. Individuals and associations of individuals ask for this or that and press their requests in a variety of ways. In spite of the political indifference of so large a proportion of the governed masses, there is no business which is subjected to such intense and persistent scrutiny as the business of the public. Unfortunately, the watchful eyes usually belong to people who are motivated by selfish interests and care relatively little about that most neglected of all worthy causes, better government in the interests of all.

The subversion of governmental power in behalf of self-seeking, effectively-organized minorities will continue until the mass of people become sufficiently well-informed, community-minded, and energetic to end the practice. No prediction will be ventured as to when that will be accomplished.

Pressure groups of various kinds with praiseworthy as well as blameworthy motives are as active in the field of city government as at the national and state capitals. Among them are political parties, whose activities have been considered, newspapers, private business enterprises, churches, chambers of commerce, service clubs, better government leagues, bureaus of research, neighborhood associations, the local bar association, parent-teachers associations, women's clubs, business men's associations, labor unions, welfare organizations, public employees, racial groups, professional associations, gangsters, racketeers, real estate dealers, milk distributors, taxpayers'

associations, contractors, trade associations, and the like. Directly or indirectly, openly or surreptitiously, these associations help to shape the policies of city governments. They represent forces to be reckoned with by the officials and politicians who control the formal governmental machinery.

Most of these groups show interest only in such matters as affect them directly, but some, such as the better government leagues or the research bureaus, pursue a broad program which covers nearly every phase of governmental activity. The North Side Business Men's Association may be concerned about street lighting or parking regulations in the business district; churches may devote attention to vice, the Sunday movie question, or welfare problems; the local medical association may make suggestions about the medical inspection of school children and other phases of public health administration; and the milk distributors may act with reference to the drafting and administration of milk ordinances. Research bureaus, better government leagues, taxpayers associations, and newspapers, on the other hand, usually have broader interests and concern themselves with one problem after another in the order of what is deemed to be their relative importance.

It is difficult to estimate the degree of influence wielded by the various pressure groups in a given community. Some are far more active than others, but so much depends upon such variable factors as time, circumstance, leadership, organization, technique and financial resources that generalization is decidedly hazardous. It does seem, however, that the time and energy devoted to influencing the city authorities is far greater when some particular private interest is at stake than when the interests of the general public are in need of protection. The old adage to the effect that what is everybody's business is nobody's business appears to have an excellent factual foundation.

Those who are doubtful about this point had better attempt to institute a movement for the general improvement of their city government or for the achievement of some specific objective, such as cleaner city streets, from which only a general, not a special, benefit is derived. A handful of citizens probably will attend the initial meeting, engage in discussion, and pay lip service to the worthy purpose for which the meeting was called, but thereafter interest will dwindle at a rapid rate, especially when it comes to doing the work which is essential for success. People who are "with you heart and soul" can always find a plausible excuse for doing no more than giving passive support. One might expect active cooperation from such service clubs as the Rotarians, Lions, Monarchs, and Kiwanians, but with rare exceptions these clubs are very timid about taking a definite stand with respect to public issues. Their members can think of all kinds of repercussions which might affect their business interests adversely.

Various techniques are used by pressure groups in pursuit of their objectives. They may present petitions to city officials, appear before the council or its committees, telephone the chief executive or send a delegation to call upon him, write letters to the editors of local newspapers, or resort to the radio to broadcast their views. Methods of a different character which

may prove far more effective are informal and probably secret conferences with influential politicians and office-holders, contributions to campaign funds, promises to deliver votes in primaries and elections, and willingness to come across with whatever it is that the powers-that-be may want. Every conceivable procedure that seems likely to prove effective probably has been tried on one occasion or another. Newspapers, especially those of the crusading type, are more or less successful in shaping the course of events by skillful use of headlines, news articles, editorials, polls of opinion, and sensational exposés by experienced reporters.

Public officials are bombarded with miscellaneous ammunition and lead a rather precarious existence. If they respond to the requests of one group, they may arouse the hostility of another, and they are seldom able to perform their duties in an atmosphere of peace and quiet with only the welfare of the community in mind. In addition to the pressure groups, officials must also contend with complaints and representations of individual citizens. These ought to be given fair consideration, particularly in a country committed to the principles of popular government, but at times the patience, good will, and sound judgment of the most conscientious and able officials are indeed sorely tried.

Another complicating factor is the relations between city and state. Since the city is the creature of the state and is necessarily subject to some degree of state control even under home rule systems conferring a maximum of freedom, the political forces of state and city often come into conflict. The situation becomes acute when one party is dominant in the state and the opposition party runs the city, especially if the city is large in size. Under such circumstances, each party does its best to embarrass the other by political maneuvers of dubious character, and responsibility for urban conditions is shifted back and forth with the greatest dexterity. Aside from party enmity, the conflict between urban and rural interests complicates city-state relations. Then, too, even under the most favorable conditions city officials are likely to resent pressure from the state capital, no matter how justifiable it may be, because so-called absentee government is usually viewed with suspicion. In their turn the cities generally maintain lobbies at the seat of the state government in order to obtain favorable legislation and to prevent the adoption of laws which they dislike. Relations with the national government and other local units also affect the urban political process in one way or another. For instance, the relief and public works programs of the national administration during the 30's materially influenced the policies and the politics of city governments.

City business is transacted under the involved conditions described in the preceding pages. The operation of visible and invisible forces of every description makes it difficult to determine how and why particular decisions are made in the legislative and administrative processes, but it is evident that comprehension of the urban political process requires more than a knowledge of the formal structure of city government, important though it is. Equally obvious is the fact that in the long run the attainment of high

standards of government depends upon the customs, traditions, ways of life, and the prevailing attitudes of the people who constitute a community.

The quality of government is a reflection of the attributes of the economic and social environment within which governmental authority is exercised. That is why improvements in formal structure and method often prove disappointing, as illustrated by the record of the council-manager plan in Kansas City during the reign of the Pendergast machine. Such reforms are worth fighting for because of their potential value in obtaining better government, but attention also must be directed to the invisible forces which prevent realization of the advantages derivable from improved structures and methods.

#### SOURCES OF INFORMATION

In city government, as in other fields, a prerequisite to sound action is trustworthy information concerning conditions, problems, methods of procedure and actual achievements. Whatever the extent to which actions are shaped by the forces and interests so far described, the rational consideration of available information undoubtedly influences the conduct of some officers and voters. Information that plays a part in the formation of official and public opinion is obtained from a variety of sources.

The chief reliance of the average voter is the daily newspaper which furnishes him with accounts of happenings at the city hall, with reports on city conditions, with news articles about the government and its functions, and with editorials urging this or that course of action. Whether the news is reliably reported or colored to suit the purposes of hidden interests is something that the ordinary person is unable to determine readily. The reading public is largely at the mercy of publishers, editors, and reporters.

In many cities, local radio stations broadcast local news, lectures or talks, and the speeches of candidates for city offices. The public also has access—which it is prone to ignore—to the printed records of city departments. These sometimes are published by newspapers and usually are available to those who wish to consult them. Public reporting in an attractive and informative manner is a comparatively recent development, but more cities are gradually awakening to the value of instructive pamphlets, budget exhibits, charts, and other devices for acquainting citizens with the work which is being done.

Information also is disseminated for public consumption by the many pressure groups which attempt to influence local policy-determination and administration. Since many of these groups are seeking special benefits for themselves, caution should be exercised by citizens in accepting at face value their presentation of the "facts."

The citizens of a fairly large number of cities are fortunate in having an independent local bureau of research which investigates various phases of city government, makes recommendations, and issues summary bulletins for the convenience of the public. These bureaus are generally supported by contributions from civic-minded persons. Most of them have established a reputation for impartial consideration of municipal problems.

Mention also should be made of various civic organizations, such as city clubs and better government leagues, which keep track of municipal affairs and bring their findings to the attention of the voters.

City officials obtain information from the sources already mentioned, from their own investigations and day-by-day experiences, and from a variety of agencies engaged in the study of general and specific problems of public administration. Some of these agencies are strictly local in character, whereas others are organized on a state, regional, national or international basis.

The most outstanding of the local group probably are the bureaus of municipal or governmental research referred to in the preceding paragraph. Many city officials have taken advantage of their reports and recommendations and the bureaus are entitled to credit for improving the quality of city government in many communities.

In 41 of the states (1948) there are leagues of municipalities which hold annual meetings and render various services to member cities. Among their activities are representation of cities before state legislatures, the maintenance of municipal reference libraries, the furnishing of information and advice in regard to municipal policies and problems of administration, and the publication of manuals, periodicals, and special reports.<sup>14</sup> These leagues, which have a combined membership of more than 9,000 cities, are constituent members of the American Municipal Association. The latter furnishes informational and other services intended to aid the state leagues in functioning more effectively, conducts required research, and sponsors an annual meeting.

There also are national, state and regional associations of officials which provide information, promote professional standards, and conduct conferences. Among them are the Municipal Finance Officers' Association, the New York State Conference of Mayors and Other Municipal Officials, the New England City and Town Clerks' Association, the Institute of Municipal Law Officers, the International Association of Chiefs of Police, and the International City Managers' Association.<sup>15</sup>

There are numerous informative national organizations of a private character. The National Municipal League, established in 1894, carries on an impressive list of activities. Besides publishing the *National Municipal Review*, books, and pamphlets dealing with many phases of state and local government, it prepares model laws, gives advice and renders assistance in the drafting of charters, recommends forms of government and methods of administration, answers inquiries pertaining to many governmental problems, furnishes speakers and consultants on request, supplies newspapers with reliable information and renders other services of varying importance.

Public Administration Service, with headquarters in Chicago, is another organization which exerts extensive influence in the field of city government. It serves "as an exchange for information, experience, and ideas among

<sup>14</sup> See E. D. Mallery, "State Municipal Leagues in 1947," *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), pp. 91-94. H. D. Smith "Associations of Cities and of Municipal Officials," *Urban Government* (Washington, The Government Printing Office, 1939), Vol. I, Part IV.

<sup>15</sup> For a summary of the various activities of the International City Managers' Association see *infra*, pp. 423-425.

organizations of public officials and others in the United States and Canada which are engaged in the active work of planning for improvements in the administrative technique of government." Its research projects and publications deserve the consideration of all persons who are interested in the ways and means of raising governmental standards of performance.

Other typical organizations, some with narrower ranges of interest, as indicated by their titles, are the Bureau of Public Personnel Administration, the Institute of Public Administration, the National Fire Protection Association, and the National Conference on City Planning.

The part played in the urban political process by the various agencies and associations which furnish information and guidance pertaining to municipal affairs cannot be measured with precision. Official and lay opinion and conduct undoubtedly are influenced to some undeterminable degree, both directly and indirectly. The extent of influence depends on the type of agency or association, the scope of its activities in terms of breadth of interests and area of operation, its techniques and resources, local circumstances, and various other factors.

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## CHAPTER XVI

### THE PREVAILING PATTERNS OF CITY GOVERNMENT

#### *Outline*

#### The Importance of Forms of Government

#### Basic Distinctions Between the Major Forms of City Government

##### The Mayor-Council Plan

- (1) Colonial Pattern of City Government
- (2) Evolution of the Mayor-Council Plan
- (3) Weak and Strong Mayor Types

##### The Commission Plan

- (1) Forerunners of the Commission Plan
- (2) The Galveston Charter
- (3) The Des Moines Charter

##### The Council-Manager Plan

- (1) Staunton's General Manager
- (2) The Lockport Plan and Early Charters
- (3) The Dayton Charter

#### THE IMPORTANCE OF FORMS OF GOVERNMENT

In his autobiography Lincoln Steffens asserts that his muckraking investigation of Philadelphia taught him a lesson which he had not learned as a consequence of similar inquiries into conditions in St. Louis, Minneapolis, and Pittsburgh. "I had to note a (to me) new and startling theory, viz.; that the form of government did not matter; that constitutions and charters did not affect essentially the actual government."<sup>1</sup>

Although this view is shared by many persons, its soundness as a generalization is open to question. For one thing, the cities investigated by Steffens were all operating under some variety of the mayor-council plan of government. The chief difference between the Philadelphia charter and those of the other cities was its concentration of power and responsibility in the mayor. At the time Steffens conducted his muckraking tour the council-manager plan was unknown and the commission plan had just been established in Galveston, Texas. Moreover, Steffens was thinking in terms of the relation between bossism and forms of government. He really meant that the latter are neither the cause of, nor the remedy for, the former. Bosses are a product of the norms of political, social, and economic life which prevail in a community, and in a favorable environment they undoubtedly can gain control over any form of government. The paper government counts for little as long as the dominant forces in a community tolerate bossism.

<sup>1</sup> *The Autobiography of Lincoln Steffens* (New York, Harcourt, Brace and Co., 1931), p. 409.



In appraising the relative merits of various forms of government, comparisons should be confined to different plans operating under *like* conditions. Valid conclusions hardly can be drawn, for instance, by comparing the results of mayor-council government in a boss-ridden community with the achievements of either commission or council-manager plans in cities in which there are no bosses. The important question is whether or not, all other things being equal, better results will be attained with one type of organization than with others.

The governmental organization of a city is the legal machinery through which the persons charged with the performance of municipal functions must operate. If this machinery be cumbersome, complex, and ill-suited to the work to be done, it stands as an unnecessary barrier to achievement of the best results with a minimum expenditure of time and effort.

Although good organization in itself is insufficient to insure good government, the conclusion that organization counts for little or nothing is contrary to general experience. Military men appreciate the advantages of having a well-organized army; the most successful business enterprises have devoted much time and money to perfecting organization; and experienced politicians realize that the support of a properly organized party is a definite asset in election campaigns. Experience with different forms of government in this and other countries also strengthens the position of those who contend that organization merits serious attention.

In spite of domination by the Pendergast machine in Kansas City (until recently) and the Maschke forces in Cleveland (during the 20's and early 30's) it is the opinion of unbiased observers that the council-manager plan produced better results in both cities than did the mayor-council form under the control of the same political machines. There is ample evidence, too, that the maximum benefits of improved procedures cannot be realized without good organization. In the field of county government, for example, it has become apparent that sound budgeting, effective purchasing, and satisfactory personnel administration are seriously hindered, if not prevented, by the extreme division of authority and responsibility which is the distinguishing feature of the typical county organization. The situation is the same in cities operating under the weak mayor-council plan and in states which have neglected to reorganize their outmoded governments.

Apart from the importance of proper organization as one of several factors determining the standards of governmental performance, there is the question of the effect of organization upon popular control of the officials who wield political authority. At one time in the history of the United States, it was thought that the secret of effective popular control lay in multiplication of the number of officials chosen by popular vote. That idea was tried and tested with disappointing results. Election of councilmen, the mayor, controller, treasurer, various department heads, and members of commissions overburdened the people to such an extent that they were unable to exercise their voting privilege wisely, and the actual choice of officials became a virtual monopoly in the hands of irresponsible politicians. Furthermore, election

of administrative officials caused the mixture of politics and administration, to the detriment of the latter, and brought about a disintegrated city governmental organization which failed to function smoothly and effectively because of extreme division of power and responsibility. The dispersion of responsibility also made it difficult for voters to fix the blame for misgovernment, and thus the very purpose of popular election was defeated. Popular government is supposedly responsible government, but popular control becomes a fiction if the government is so poorly organized that definite location of responsibility is rendered difficult if not impossible.

If organization has a bearing upon effective and efficient popular government, and there is abundant evidence that it does, the form of government is a matter of importance which deserves the attention of those who are interested in the attainment of higher standards of governmental service. The fact that good organization is in no sense a cure-all or an automatic guarantee of excellent results is a poor reason for maintaining that the type of government does not matter. In so far as improper organization is an obstacle to better government, every effort should be made to remove it.

#### BASIC DISTINCTIONS BETWEEN THE MAJOR FORMS OF CITY GOVERNMENT

The basis of distinction between the several patterns of city government in the United States is the relationship between the organs charged with the performance of legislative, executive, and administrative functions. Since the courts which function in urban areas are integral parts of the state judicial system,<sup>2</sup> the arrangements which are made for the administration of justice need not be taken into consideration. Each of the prevailing forms of city government in the United States is characterized by a controlling principle with respect to the functional distribution of power and responsibility.

**The Mayor-Council Plan.** Most cities in the United States operate under the mayor-council plan which is based upon the doctrines of separation of powers and of checks and balances. In its essential features this plan bears close resemblance to the national and state governments. It is the historical result of an evolutionary process in which the colonial type of city government was transformed by imitation of the national and state systems, particularly the latter. Powers are divided between an elective mayor and an elective council.

<sup>2</sup> At the lowest level in the hierarchy of state courts are the courts of justices of the peace, aldermen, and magistrates. Their jurisdiction extends to minor civil and/or criminal cases. Above these minor courts are the general trial tribunals which are organized on a county or district basis. The aforementioned courts exercise original jurisdiction over legal controversies arising in both urban and rural areas. In the case of large cities, many states provide a special organization in the form of a municipal court with a presiding judge and various branches or divisions for the disposition of particular types of cases. The Recorder's Court of Detroit is an example of such a court. Its judges are chosen by popular vote for a six-year term. These judges select the presiding judge. The Court has broad original jurisdiction over criminal actions, including violations of municipal ordinances, which arise within the corporate limits of Detroit. The Philadelphia Municipal Court is a county court composed of judges who are paid by the state and who are elected for ten-year terms. One of the judges is selected by the others to serve as president and administrative head of the court. The Court's jurisdiction extends to civil cases in which the amount in controversy is not over \$2500, to lesser criminal offenses triable by jury, and to juvenile and domestic relations cases. Other large cities, e.g., Chicago, Cleveland, and Milwaukee, have similar courts.

(1) **Colonial Pattern of City Government.** In spite of considerable variation in detail from city to city, a basic pattern of urban government characterized the colonial period. Its distinguishing feature was the concentration of power in a council composed of the mayor, recorder, aldermen, and common councillors. As a body, these officials transacted most of the municipality's business, including the adoption of by-laws, the management of corporate property, and the appointment of minor officials. Special committees usually were appointed to attend to or to supervise matters of an administrative character.

In most of the 24 incorporated cities and boroughs the common councillors were elected annually by the voters under a suffrage which, according to present-day standards, appears restrictive. In the others, the close corporations, the original councillors were named in the charter to serve for life, and as vacancies occurred, successors were chosen by the remaining councillors. Aldermen usually were selected by the council from its own membership, but in some instances they, too, were elected. The mayor and the recorder were chosen in several ways, viz., by the entire council from its own membership, by the aldermen, and sometimes by the colonial governor. Occasionally, the mayor was elected by the qualified voters, i.e., the freeholders.

Although enjoying greater prestige and a more dignified title, the mayor and the aldermen possessed essentially the same powers as the councillors. The chief difference lay in the fact that the mayor and aldermen were justices of the peace with jurisdiction over petty criminal and civil cases. This judicial power also was possessed by the recorder who represented the municipal corporation in legal actions to which it was a party and served as its legal adviser. Collectively, the mayor, recorder, and aldermen functioned as a municipal court which possessed significant judicial and administrative powers.

The mayor, as official head of the city, represented it on ceremonial occasions, presided over council meetings, and sometimes possessed the power to appoint a limited number of minor officials. In many communities, he was *ex officio* holder of a number of other offices, e.g., clerk of the market, water bailiff. However, the council, of which the mayor was a member, was clearly the dominant organ of city government. It was the repository of practically all powers.

(2) **Evolution of the Mayor-Council Plan.** Following the break with Great Britain, there was at first little change in the structure of city government, but now and then alterations occurred in some cities which heralded a transformation that became rather widespread by the middle of the nineteenth century. The most important features of this transformed organization were: popular election of the mayor and the heads of certain administrative departments; the more extensive, but nevertheless restricted powers of the mayor; in some municipalities, chiefly the larger cities of the east, division of the council into two chambers sitting separately and with substantially

the same powers; a pronounced division of responsibility for the conduct of municipal affairs among the council, the mayor, and certain administrative officials; and loss of the judicial powers of mayors and aldermen.

The plan of city government which evolved was modeled after the typical state governmental system which stressed the separation of powers in combination with checks and balances of one type or another. Although suffering a curtailment of power, the council remained the most potent of the several organs of city government, partly because of its control over finances and partly by reason of the supervision exercised by its committees over the administrative departments.

Another outstanding structural change, occurring during the third quarter of the nineteenth century, was the extensive substitution of boards and commissions for the single officials formerly provided as the controlling authorities for the several administrative departments. In many instances, the members of these boards and commissions were appointed by state authorities, e.g., the governor.

The foregoing transformation in organization was particularly noticeable in the larger cities. In the smaller municipalities, especially those which sprang up in the western states, another type of government became fairly common. Its distinguishing feature was the dominant position of the council which usually was referred to as the board of trustees. The presiding officer of this body, known as president or mayor, was either elected by the voters or chosen by the board from its own membership, but, aside from his powers as chairman, his position differed little from that of the other trustees. A few elective officers, such as the treasurer, auditor, clerk and assessors, sometimes were provided, and these possessed such power as was not vested in the controlling board of trustees.

**(3) Weak and Strong Mayor Types.** The general pattern of government which evolved during the first three-quarters of the nineteenth century, in the manner sketched so briefly in the preceding paragraphs, is now known as the weak mayor-council plan. It is still by far the most common form of municipal government throughout the United States, particularly in smaller cities and villages. The weakness of the mayor's position lies in the fact that his power in relation to administration is restricted in a variety of ways which will be discussed at greater length in the next chapter.

Although nominally the chief executive, the mayor actually shares control over administration with the council, with a varying number of elective officials, and with other agencies which for one reason or another he is unable to direct effectively. In some municipalities, for instance, the Pennsylvania boroughs in which the title "burgess" rather than "mayor" is used, his position is so weak that the plan of government is more appropriately described as "councilmanic" than as "mayor-council."

The strong mayor-council plan, which, like the national government and some of the recently reorganized state governments, provides for a powerful chief executive, represents an attempt to overcome the shortcomings of the

weak mayor form with its disintegrated administrative organization. Generally speaking, it may be said to have developed during the last two decades of the nineteenth century and finally emerged as a distinct plan by the beginning of the twentieth. Its gradual growth bars the fixation of a precise date of origin. Although the Brooklyn charter of 1880 might be cited in this connection because it authorized the mayor to appoint department heads without the approval of the council, there were a few earlier charters which provided for a substantial increase in the powers of the mayor.

Like Topsy, the strong mayor-council plan "just grewed," and even today it is often difficult to determine whether the mayor-council government of particular cities is of the strong or weak mayor variety. The explanation lies in the varying degrees of the mayor's power from city to city. Although the strong mayor set-up has been established in many of the largest cities, including New York, Boston, Cleveland, San Francisco, Seattle, and Denver, it has made little headway in the smaller communities.

Separation of powers and checks and balances characterize both the strong and weak mayor-council plans. They differ in the degree to which power and responsibility are divided and checked. The mayor's independence of the council in the exercise of whatever powers he possesses is insured by his popular election for a fixed term, while the council's freedom from control by the mayor is secured in the same way. Both weak and strong mayors usually possess the veto power and may make recommendations to the council which, although it performs other functions, is primarily designed for the making of final decisions in the process of policy determination.

Strong mayors are effective administrative heads, chiefly because of their extensive powers of appointment and removal, whereas weak mayors can appoint and remove fewer officials and then only under restrictions which prevent the free exercise of their discretion. A mayor's powers with respect to administration affect his relations with the council in many ways and are of primary importance in determining the degree of his influence in all aspects of city government.

**The Commission Plan.** Next in the order of historical development is the commission plan of government which is in effect in approximately 500 municipalities. Its underlying principle is concentration of legislative, executive, and administrative power in a small commission chosen by popular vote.

As a body the commission decides questions of local policy, appropriates and expends money, levies taxes, appoints and removes officials and employees, and, in theory, directs and supervises administration. Each commissioner acts as the head of an administrative department, but in this capacity he is legally responsible to the commission of which he is a member. One of the commissioners also serves as mayor of the city. This mayor, who is chosen in different ways in commission-governed cities, enjoys few powers in addition to those which he possesses as a member of the commission. In most cases he is little more than a figurehead. From this brief description,

it is apparent that under the commission form powers are neither separated nor subjected to checks and balances. The same officials who determine policy are placed in charge of its administration.

The commission plan is mainly a twentieth century development. After its establishment in Galveston, Texas, in 1901, in several other Texas municipalities and one Idaho city in 1907, and in Des Moines and Cedar Rapids, Iowa, in 1908, it spread rapidly, reaching the peak of its popularity during the decade from 1910 to 1920. Although losing ground today, largely because of competition with the council-manager form, it remains one of the standard plans of American city government.

**(1) Forerunners of the Commission Plan.** Previous to the Galveston experiment the commission principle was applied on several occasions in organizing the governments of particular cities. In some instances this step was taken temporarily as an emergency measure.

The earliest case of a city government which bore resemblance to the commission plan was that of Sacramento, California. Under the Sacramento charter of 1863, the city's governing body was a board of trustees of three members who were elected from the city at large for a two-year term. Each trustee was placed in charge of an administrative department (police, streets, and waterworks) and one of them, who was president of the board and head of the police department, possessed general supervisory authority over all subordinate officers. The board eventually lost its administrative powers and the charter was abandoned in 1893.

For a period of twelve years, from 1870 to 1882, during the regime of a "carpetbagger" legislature in Louisiana, New Orleans was governed by a council composed of a mayor and seven administrators who were elected from the city at large for a two-year term. This council settled questions of policy, organized the departments, fixed the number and compensation of officers and employees, and made appointments and removals on the recommendation of the administrators, each of whom was placed in charge of one of the seven administrative departments. As chief executive of the city, the mayor's task was that of general supervision over the entire government. He presided over council meetings with a vote only in case of a tie, could call special meetings, was required to submit to council a full statement of the affairs of the city, was charged with the responsibility of seeing that laws and ordinances were enforced, and was authorized to suspend officers and employees for failure to perform their duties. He was required to report such suspensions to the council for final action. The administrators were obliged to present written reports to the mayor every month. A substantial compensation was paid the members of the council, the mayor receiving \$7,500 and each administrator \$6,000.

In 1879 Memphis, Tennessee, and Mobile, Alabama, lost their charters because of the serious financial difficulties in which they had become involved. As a remedial measure, the legislatures of both states established governing boards with severely restricted powers. Unlike the New Orleans

council, these boards were hardly prototypes of the commission plan of government, but they represented a departure from the traditional mayor-council organization and merit brief consideration as early examples of the commission idea in the government of cities.

In the case of Memphis, the power to adopt ordinances was vested in a "Legislative Council" composed of two boards, a three-man board of police and fire commissioners and a five-man board of public works. The former of these boards was charged with the performance of most of the usual administrative functions of a city. At first only one of the police and fire commissioners and three members of the board of public works were chosen by the voters, the governor and the Quarterly Court each appointing one of the other two members of each board, but by 1881 the voters were permitted to elect the entire number. Eventually an elected mayor was provided as president of the fire and police commission, and except for minor changes the agencies described constituted the government of Memphis until 1910.

The short-lived emergency organization of Mobile involved two distinct agencies. One of them was a commission of three appointed by the governor to take charge of the former city's assets and pay its debts from the proceeds therefrom. The other, created by the statute incorporating the Port of Mobile, was a police board of eight members elected from the city at large for a two-year term, subject to the requirement that there was to be a resident member for each of the eight wards into which the Port was divided. A president was originally chosen by the board from its own membership, but within a short time this position also was made elective. The Board's powers were strictly limited to the performance of indispensable services, such as police and fire protection, and the levy and collection of specified taxes to defray necessary expenses. Eight years after its creation, the board was abolished by the legislature and replaced by a typical mayor-council plan.

The capital of the United States affords another example of the early use of a commission as the general governing body of a city. In 1874, due to the financial plight of the District of Columbia, Congress provided for its temporary government by a commission of three appointed by the President with the advice and consent of the Senate. Four years later, essentially the same arrangement was embodied in an Act providing a permanent form of government for the District of Columbia.

Under this Act, which with certain modifications is still in effect, the District commission consists of two civilians appointed by the President and confirmed by the Senate and an officer of the Engineers Corps of the United States Army detailed from time to time by the President to serve as a commissioner. The civilian members, who must be actual residents of the District, are appointed for three-year terms which expire at different times. Each year the commission chooses one of its members to act as president and presiding officer.

Although the commission possesses power to adopt local regulations concerning specified subjects, it is essentially an administrative body because Congress deals with important legislative and financial matters. The com-

mission directs and supervises the administration of municipal services in the district and appoints and removes subordinate officials and employees. It is authorized to abolish or consolidate offices, determine the number of employees, and prepare an estimate of its financial needs which is first submitted to the Bureau of the Budget and then to Congress for final approval. Although all power is vested in the commission as a body, in practice the individual commissioners divide the control of the various services among themselves in such a manner as they deem advisable.

(2) **The Galveston Charter.** The Galveston charter of 1901, as amended in 1903, marked the real beginning of the establishment of the commission plan of government in American cities. Its adoption was due to the chaotic conditions which followed the hurricane and tidal wave that beset Galveston in the autumn of 1900 and caused extensive loss of life and property. The existing government consisting of a mayor and 12 aldermen proved unequal to the occasion, and a committee of the local chamber of commerce drafted a new plan of government which the Texas legislature incorporated in a special act applying to Galveston.

The new charter vested the government of the city in a commission of five, three to be appointed by the state governor and two to be elected by the qualified voters of the city. All were to serve a two-year term. A president of the board of commissioners was to be designated by the governor from among the three commissioners named by him. However, in 1903, as a consequence of a court decision, the charter was amended to provide for the election at large of all five commissioners and the selection of the president by the commission from its own membership.

The concentration of power in the commission is indicated by the following grants of authority: to make all laws and ordinances; to make all necessary rules and regulations concerning the organization, management, and operation of departments; to control and supervise all departments; to appoint, suspend, and discharge all officers and subordinates; and to prepare the budget, appropriate money, levy taxes, and issue bonds. In other words, the commission was empowered to exercise all legislative and administrative powers conferred upon the city. Four administrative departments were created by the charter, Police and Fire, Streets and Public Improvements, Waterworks and Sewerage, and Finance and Revenue. The commission was required to place one of its members in special charge of the general supervision of each department.

The president was described as the executive officer of the city, charged with the responsibility of seeing that all laws were enforced, and authorized to create and control a special police force of citizens for the enforcement of law and order whenever, in his opinion, an emergency existed. He presided over the meetings of the commission, could call special meetings, and, as a member of the commission, possessed the right to vote on all questions. Although the president was to receive a \$3,000 salary, as compared to \$500 for the other commissioners, and was required to devote at least six hours



per day to the duties of his office, his position carried little power in addition to that possessed by the other members of the commission.

The nominal compensation of the commissioners, the fact that the charter contained no provision concerning the minimum time to be devoted to their duties, as in the case of the president, and charter provision for certain officers to superintend particular services, such as an engineer to be superintendent of streets, indicate that the commissioners were expected to render only part-time service to the city. That proved to be the actual practice. Eventually the president's salary was reduced to \$2,000 and that of the commissioners raised to \$1200.

(3) **The Des Moines Charter.** The well-advertised success of commission government in Galveston led to its adoption in many other communities. Among the first to follow suit was Des Moines, Iowa. Although the details of commission government will be considered in a subsequent chapter, a summary of the Des Moines plan at this point seems advisable because it differed in some respects from the Galveston model and appears to have been copied to a greater extent by other cities, probably because of the greater publicity which it received.

The optional law which Des Moines adopted provided for a council composed of a mayor and four councilmen to be chosen by popular vote from the city at large for a two-year term. Candidates for mayor and councilman were to be nominated at a non-partisan primary at which each voter could vote for one candidate for mayor and four candidates for councilman. The names of the two candidates receiving the highest vote for mayor and the eight obtaining the highest vote for councilman were to be placed on the ballot at the next succeeding municipal election.

As in Galveston, all legislative, executive, and administrative powers were vested in the council. The administrative services were to be performed by five departments, public affairs, accounts and finances, public safety, streets and public improvements, and parks and public property, but the council was authorized to determine the powers and duties of each.

Although the law specified that the mayor was to be superintendent of the department of public affairs, the assignment of one councilman to the superintendency of each of the other departments was to be made by the council. In addition to his powers as a member of the council and as a department head, the mayor presided over council meetings and was charged with the duty of supervising all departments and reporting matters to the council for its action.

In cities over 60,000 in population, to which category Des Moines belonged, the annual salary of the mayor was \$3500 and that of each councilman \$3,000. The mayor and councilmen were expected to devote full time to their positions and to assume active control of their departments, subject, of course, to the controlling authority of the entire council. Another feature of the Des Moines charter was its provision for a popular check upon the dominant council in the form of the initiative, referendum, and recall.

From the standpoint of basic characteristics, the Galveston and Des Moines plans were alike. They differed in the following respects: in the former city, elections were partisan instead of non-partisan as in the latter; the Galveston mayor (president) was chosen by the commission from its own membership, whereas the Des Moines mayor was directly elected as such by the voters; in Des Moines there were five departments, one headed by the mayor, as compared to four in Galveston where the mayor was not assigned to a department; the commissioners served as part-time department heads in a supervisory capacity in Galveston, whereas the Des Moines plan contemplated full-time service and direct management by the councilmen-department heads; and finally, no provision was made in the Galveston charter for the initiative, referendum, and recall, or for a formal merit system.

These differences were not of major importance. It should be noted in particular that there is no necessary relationship between the commission plan of government and the merit system, non-partisan elections and nominations, or such instruments of direct popular control as the initiative, the referendum, and the recall. These devices can be and have been combined with any of the prevailing patterns of city government. However, their adoption had been urged in Des Moines as especially desirable because of the concentration of authority which features the commission plan.

**The Council-Manager Plan.** The council-manager plan of government is based on the controlling principle of a concentration of authority and responsibility in combination with a division of functions. Unlike the mayor-council form, it does not involve a separation of powers in conjunction with checks and balances. Unlike the commission plan, it does not provide for the performance of legislative and administrative functions by the same group of officials. Authority and responsibility are concentrated in a council, usually small in size, which is chosen by popular vote. Although the council may deal with administrative matters by ordinance or resolution, it is supposed to refrain from engaging in the actual performance of administrative functions, and often is prohibited from doing so by express charter provision.

The administration of policy is placed under the direction and control of a city manager who is selected by the council and holds office at its pleasure. Since the manager is appointed and removed by the council, he lacks the independence of the mayor under mayor-council government. For this reason, even though definite powers are commonly granted the manager by charter provision, it is properly said that the doctrine of separation of powers, as understood in the United States, plays no part in the manager plan.

The manager is immediately responsible for administrative results, but since he is the administrative agent of the council, the latter is ultimately responsible for administration as well as for the determination of policy, which is its primary function. In practice, the line of demarcation between the respective provinces of council and manager is subject to fluctuation. It varies from city to city in ways that will be considered at greater length in a subsequent chapter devoted to the details of manager government.

As administrative head of the city, the manager possesses the important powers of appointing and removing department heads and other subordinate officers and employees. He also prepares the budget, makes recommendations to the council, and attends council meetings, usually enjoying the privilege of participating in discussions without possessing the right to vote.

The meetings of the council are presided over by a mayor who is a full-fledged member and is selected in different ways. He is the official head of the city government, but apart from his position as presiding officer and member of the council, no other important powers and duties are ordinarily attached to his office.

(1) **Staunton's General Manager.** The first city to employ a manager as administrative agent of the council was Staunton, Virginia, in 1908. Although its government was of the weak mayor-council variety, the council, which was a two-chambered body, possessed the power to establish other offices by ordinance. Acting under this authority, it created an officer, designated as "General Manager," who was to be selected by a joint session of the two branches of the council for a term of one year, subject to removal by the council at any time.

This general manager, who was to devote his entire time to the discharge of his duties, was placed in control of the various administrative departments of the city government. To this end he was empowered to make all contracts for labor and supplies and to perform all the executive and administrative work then handled by the standing committees of the council, with the exception of the finance, ordinance, school, and auditing committees. Although engrafted upon a mayor-council organization and possessing fewer formal powers than the typical manager of today, the general manager of Staunton was the forerunner of the controlled type of executive found in the numerous cities now operating under the council-manager plan.

(2) **The Lockport Plan and Early Charters.** The first establishment of the manager form by charter provision occurred in Sumter, South Carolina, in January, 1913, and shortly afterward similar charters became effective for Morganton and Hickory, North Carolina, and La Grande, Oregon, in the order named. Of greater subsequent importance, however, as a model for council-manager charters, was the abortive Lockport Plan of 1911 which was drafted by Richard S. Childs, Secretary of the National Short Ballot Organization, for the Board of Trade of Lockport, N. Y. It failed of adoption by the New York state legislature.

This plan limited the elective officers of the city to a council of five aldermen chosen at large for a four-year term and provided that the council should appoint a city manager to act as the administrative head of the city government and serve in that capacity at the pleasure of the council. The manager was charged with the duty of seeing to the enforcement of laws and ordinances and was required to attend council meetings, submit recommendations and reports, prepare business, and draw up resolutions and ordinances for

adoption by the council. He also was empowered to prepare the budget and to appoint most officers and employees, including department heads, subject to confirmation or rejection by the council. Officers and employees with unfixed tenure were to serve at the pleasure of the appointing authority, and it was specifically provided that none of the appointees of the manager could be removed without his consent. The candidate for council polling the highest popular vote was to be mayor of the city and president of the council. He was to be official head of the city, but no powers of particular significance were conferred upon him.

(3) **The Dayton Charter.** Another milepost in the city manager movement was adoption of the plan by Dayton, Ohio, in 1913. Its charter went into effect on January 1, 1914, and has been retained ever since. Dayton was the first large city to install council-manager government, and this fact, together with the plan's marked success and the publicity it was given by its sponsors, including John H. Patterson who was president of the National Cash Register Company, caused the Dayton experiment to receive more attention than was given to the earlier trials of manager government in other cities. *The eyes of the world had already been focused on Dayton because of the flood of 1913 which occurred while the movement for adoption of a manager charter was in progress.*

The Dayton charter merits special consideration because of its general superiority to those which antedated it and to many subsequent charters which have provided for council-manager government. A commission of five citizens to be elected at large was established as the governing body with power to pass ordinances, adopt regulations, and appoint a chief administrative officer to be known as the city manager.

Commissioners were to serve a four-year term under an arrangement which provided for the choice of three at one regular election and two at the following election two years later. Any qualified voter residing in the city was eligible for election to the commission. The mayor was to be the member of the commission receiving the highest number of votes at the election at which three commissioners were chosen. He was made the official head of the city with power to preside over the commission and call special meetings.

The city manager, who was made the administrative head of the government, served at the pleasure of the commission. He also was subject to recall by popular vote. Application of the recall to an appointed manager is inconsistent with the basic principles of the council-manager plan, and it is fortunate that few cities have followed Dayton's example in this respect. As for the manager's qualifications, the charter merely provided that he should be appointed without regard to his political beliefs and that he need not be a resident of Dayton at the time of appointment. His powers included the following: to see that laws and ordinances were enforced; to appoint and remove all directors of departments and all subordinate officers and employees in the departments; to exercise control over all departments and divisions; to attend all commission meetings with the right to participate in discussion,

but without a vote; to recommend measures to the commission; to prepare the budget and advise the commission concerning the city's financial condition; and to perform other duties imposed by the charter or by action of the commission.

The Dayton charter established the departments of law, public service, public welfare, public safety, and finance, but authorized the commission to discontinue any department and to determine the functions and duties of departments and their subdivisions. The salaries of the mayor and commissioners were fixed by charter provision at \$1800 and \$1200 respectively, while the compensation of other officers and employees was to be prescribed by the commission in certain specified instances, e.g., the manager and the departmental directors, and by the manager in all other cases.

Among other features of the Dayton charter which are worthy of special mention are its provisions for the appointment of advisory boards by the commission at the request of the manager, for budgetary procedure, for salary standardization and centralized purchasing, for the merit system, and for the initiative, the referendum, and the recall. Considered as a whole the charter was excellently conceived, and that fact contributed to its unquestioned success.

As a systematic plan, council-manager government for cities may be credited to Richard S. Childs who combined certain features of the commission plan and the Staunton experiment in draft form in 1910 and later persuaded the Lockport Board of Trade to sponsor his proposal. The origin of the manager-council idea is difficult to determine. Those who participated in bringing about the creation of a general manager for Staunton certainly deserve a share of the credit, but the basic features of this pattern of city government are probably the result of adaptation of a principle of organization that had previously been acted upon in private as well as public enterprise.

The analogy between the council-manager plan and the corporate form of business organization is fairly obvious. Thus the voters of a city may be compared to the stockholders of a corporation, the council to the board of directors, and the city manager to the general manager in charge of operations. The typical organization in the field of public education which antedated the manager plan is also essentially the same. In theory, if not always in practice, the board of education is supposed to be a representative body chosen by the voters to decide questions of educational policy and to employ an expert superintendent of schools to act as its administrative agent and adviser, with respect to educational problems in general and the more technical aspects of the educational process in particular. With these examples of a controlled executive of the appointive type in actual use, it is not surprising that the council-manager plan was devised, especially because the commission form which had already been established was more or less suggestive of the next step to be taken.

Before turning to a more detailed consideration of the prevailing patterns of city government, a brief summary of their distinguishing characteristics may prove helpful. Under the mayor-council form, power and responsibility

are divided between an elective mayor and an elective council, with the relative importance of these two mutually independent agencies being determined by the degree of authority conferred upon the mayor whose primary rôle is supposed to be that of chief executive. The commission plan concentrates power and responsibility in an elected commission which performs both legislative and executive functions and engages in administration, not only as a controlling body, but also through the agency of its members in their capacity as heads of administrative departments. Under the council-manager plan, an elected council is made fully responsible for policy-determination and administration, subject to the restriction that instead of performing administrative functions itself it must select an agent, the city manager, who serves at its pleasure as administrative head of the city government.

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## CHAPTER XVII

### MAYOR-COUNCIL GOVERNMENT: THE MAYOR

#### *Outline*

#### **The Mayor**

Method of Selection

Tenure of Office

Qualifications

Compensation

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(1) Legislative Powers

(a) The Veto Power

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(a) Appointment of Officials

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Strong and Weak Mayors

The Mayor's Work-Load

AT THE END of the nineteenth century, all cities in the United States were operating under some variety of mayor-council government. Even today, in spite of inroads made by the commission and council-manager systems, the mayor-council plan remains in effect in about three-fourths of the cities with a population of 2,500 or greater. As pointed out in the preceding chapter, the mayor-council label is applied to particular organizations which differ from one another with respect to the relative importance of the mayor and the council.

Strong and weak mayor varieties of the basic pattern are distinguishable. However, this distinction tends to over-simplify the actual situation because the degree of power possessed by mayors and councils varies so much from place to place that it often is difficult to decide whether the government of a particular city should be assigned to one or the other of the two recognized sub-types. The details requiring consideration in appraising the strength of the formal position of the mayor differ so greatly from city to city that scarcely any general statements cover all cases with strict accuracy.

Some type of mayor-council government is found in 59.8% of the 2,033 incorporated cities having a population of 5,000 or over. The proportions



for the different population groups are as follows: over 500,000—100%; 250,000 to 500,000—39.1%; 100,000 to 250,000—47.3%; 50,000 to 100,000—37.7%; 25,000 to 50,000—50%; 10,000 to 25,000—53.2%, and 5,000 to 10,000—69.5%.<sup>1</sup>

All of the thirteen largest cities in the United States (excluding Washington, D.C.) and nearly three-fourths of those falling within the lowest of the above population categories operate under the mayor-council plan. The proportion is considerably higher, more than nine out of ten,<sup>2</sup> for incorporated urban communities with a population under 5,000. As between the strong and the weak mayor types, the latter predominates by a heavy majority.

### THE MAYOR

**Method of Selection.** Under the mayor-council system, the mayor almost always is chosen by popular vote. As will become apparent in the following pages, many of the distinctive attributes of mayor-council government in action arise from the fact that the mayor's office is elective. A few cities provide for selection of the mayor by the council from its own membership and a negligible number stipulate that the candidate obtaining the largest vote in the councilmanic election shall serve as mayor.<sup>3</sup> Substitution of these or other modes of selection raises the issue of the propriety of assigning the governments in question to the mayor-council category. They usually are so classified if the mayor enjoys security of tenure and possesses the powers which mayors normally are granted under the mayor-council plan.

Ordinarily, mayors are elected according to the single choice-plurality system. Although a majority vote seldom is required, some cities have at one time or another used the Bucklin system of majority preferential voting and a limited number have tried the Ware or alternative vote plan. Few mayors are now elected by a preferential vote. A fairly large number of cities provide for an apparent majority choice by using the non-partisan primary as a method of nominating candidates. All but the two highest competitors are eliminated at the primary, and unless other candidates may be nominated subsequently or have their names written-in at the regular election, the final contest between the two survivors of the primary results in a so-called majority choice.

In nearly three out of every five mayor-council cities having a population over 5,000, elections are conducted on a partisan basis. Popular interest reaches its highest peak in competition for the mayor's office. As a rule this position is hotly contested.

<sup>1</sup> *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), p. 41, Table 1.

<sup>2</sup> There are approximately 14,000 incorporated municipalities with a population below 5,000. Of these, about 500 use either the commission or council-manager plans. The remainder fall in the broad mayor-council category.

<sup>3</sup> Of the mayor-council municipalities with a population of 5,000 or over, 6% report choice of the mayor by the council from its own membership. Practically all of them are small cities in California or urban townships in such states as New Jersey, Pennsylvania, and Rhode Island. A very much smaller proportion of municipalities, 0.6%, follows the plan of having the councilmanic candidate with the highest popular vote act as mayor. See *ibid.*, p. 42, Table 42.

**Tenure of Office.** Most cities provide for a two- or four-year term. Although the former is the more common, the latter is gaining favor, particularly in the larger cities. The chief argument in support of the longer period of service is that the mayor is given a better opportunity to carry his program into effect without the necessity of seeking re-election. It also is claimed that longer intervals between elections promote greater stability throughout the city government by reducing the turnover in personnel, especially in the high positions. The public benefits from service by more experienced officials. In a number of cities the mayor is elected for a one-year period, in some for a three-year term, and in a few for five years.

Ordinarily, no limitation is placed on the number of terms for which a given person may be elected, but sometimes, as in the cases of Philadelphia, Buffalo, and cities in Indiana, re-election for successive terms is prohibited. This restriction is supposed to prevent powerful mayors from building up political machines and from being influenced in their actions by considerations of political expediency. There is no conclusive evidence that its effects have proved beneficial. Such an arrangement deprives voters of the opportunity to retain the services of a good mayor, necessitates a periodic change in administration whether or not desirable, and merely alters the character of political manipulations, if it affects them at all. To some extent it weakens the rôle of the mayor in the process of city government, especially in his dealings with the council. His political influence is lessened because he is barred from seeking immediate re-election.

Once elected to office, the mayor enjoys great security of tenure because such methods of removal as normally are provided usually involve restrictions which limit their use to special occasions. Another reason is the fact that political upheavals are likely to occur when attempts are made to remove officials who owe their positions to popular vote. In any event, mayors rarely are removed from office before their terms expire. To ascertain the available methods of removing a mayor in a particular city, it is necessary to consult the charter, applicable state laws, constitutional provisions, and interpretative judicial decisions.

The most commonly provided method is by action of the council for just and reasonable cause after due notice, presentation of charges, and a public hearing. Generally, an extraordinary majority vote such as two-thirds or three-fourths of the council is necessary to effect removal. If the power to remove is neither granted nor denied expressly or by implication, the courts usually hold that the council possesses it under the rules of the common law. Since the council can remove only for legal cause such as official misconduct and by a formal and somewhat cumbersome procedure, the independence of the mayor is in no way endangered. It would be if the council were empowered to dismiss him at pleasure.

Another method of removal frequently authorized is by action of the courts. In this case, too, the procedure is complex. The causes justifying removal are limited in number and usually pertain to illegal conduct in office. Ousters for political reasons lie beyond the jurisdiction of the courts.

In a few states, Michigan, North Dakota, New York, and Ohio, the governor may remove mayors for cause in conformity with a formal procedure involving presentation of charges and a hearing. Few such removals have been made. As governor of New York, Franklin D. Roosevelt probably would have removed Mayor Walker of New York City, but the latter's resignation brought the hearings to a close and made final action by the governor unnecessary.

The mayors of many cities may be removed from office by popular recall. As pointed out in a preceding chapter, the institution of recall proceedings rests with the discretion of the city electorate without legal limitation in regard to the grounds for taking action. Theoretically, the recall should not be invoked as long as a mayor renders satisfactory service, but in practice political considerations sometimes prove a determining factor. The fact that comparatively few mayors have been recalled may be due to inertia, the large number of signatures often required to institute proceedings, popular satisfaction with the average mayor, and the feeling that the recall should be used only in extreme cases as an emergency measure.

Various methods are used to fill vacancies which occur in the office of mayor by reason of removal, death, resignation, or other cause. In some cities, an officer designated by charter provision succeeds to the office. The successor is the vice-mayor, if there be one, frequently the president of the council, or occasionally the city controller. A common practice is to hold a special election for the purpose of choosing a successor. However, if the unexpired portion of the term is short, e.g., a year or less, the choice usually rests with the council, as it does in many cities which make no provision for a special election. Sometimes, the charter designates the official who is to act as mayor until an election is held.

**Qualifications.** The legal qualifications to be met by aspirants for the office of mayor are basically the same in all cities. United States citizenship plus minimum age and residence requirements almost invariably are established, and in addition a few cities specify a taxpaying or property qualification.

The period of required residence usually ranges from one to five years, but occasionally it is longer. Sometimes, too, the mayor must have been a citizen for not less than a specified number of years. As for age, the most common minimum, 21 years, ordinarily is established indirectly by the simple provision that the mayor must be a qualified voter of the city. Some municipalities, preferring more mature executives, have raised the age limit to 25 or 30 years. To be eligible for the office of mayor in Baltimore, for instance, a person must be a United States citizen, at least 25 years old, and a resident of the city for ten years next preceding election.

Obviously, the standard legal qualifications have little or no bearing on fitness for office. The mere fact that an individual is a United States citizen, 21 years of age or over, and has resided in the city for a year or more is without significance as far as honesty, executive ability, and knowledge of

municipal problems are concerned. Presumably, the resident knows his town, has a stake in the community, and may be better known by the voters, but these presumptions, even if warranted, are extremely crude criteria of competence. Perhaps the time will come when prospective candidates for the mayoralty will be required to meet some test of fitness for service, assuming that a practicable scheme can be devised. If so, the caliber of mayors no longer will depend solely on the judgment of the voters, their good luck, and the beneficence of the politicians who actually do the choosing under the present system.

Of far greater importance than the typical legal qualifications are the political requirements for success in election contests. Among them are political availability, which is determined by sundry factors, a colorful personality, speaking ability, and the backing of a strong political organization, the price of which usually is willingness to obey orders and to play the political game according to the wishes of influential politicians. Now and then, cities are fortunate in obtaining unusually able chief executives; sometimes they choose very poor ones. But, generally speaking, the American brand of mayor is merely a mediocre man holding an office which calls for more ability than he possesses.

**Compensation.** The compensation of mayors varies from a few hundred dollars per year in the small cities in which part-time service is rendered to the present maximum of \$25,000 in New York City and Detroit. Boston pays its chief executive \$20,000, Philadelphia, \$19,800, Chicago, \$18,000, and Baltimore, Cleveland and Pittsburgh, \$15,000.<sup>4</sup> The recent average salary of full-time mayors in cities having a population over 10,000 was as follows: for 12 cities over 500,000—\$17,358; for 14 cities from 250,000 to 500,000—\$9,507; for 34 cities from 100,000 to 250,000—\$7,200; for 58 cities from 50,000 to 100,000—\$5,727; for 101 cities from 25,000 to 50,000—\$4,116; and for 137 cities from 10,000 to 25,000—\$3,086.<sup>5</sup>

The smaller the city the lower the compensation. In the population group from 50,000 to 100,000, the average salary of the superintendent of schools is more than one and one-half times that of the mayor and that of the city attorney is slightly over the average for mayor. For cities ranging from 25,000 to 50,000 in population, the mayor's average is lower than that of the director of finance, the controller, the engineer, the director of public works, the chief personnel officer, the city attorney, and the health officer. In the 10,000 to 25,000 category, the mayor's average is about three-fourths that of the engineer, the director of public works, and the health officer. The average salary of school superintendents exceeds that of mayors in all classes of cities except those with a population of 500,000 or over.<sup>6</sup> Some cities, usually the larger ones, give the mayor an expense allowance for entertain-

<sup>4</sup> The city clerks of these cities furnished the author with information concerning the mayors' 1948 salaries.

<sup>5</sup> *Ibid.*, pp. 104-106, Table VII. Unfortunately, the table reports salaries for the mayors of non-manager cities without distinguishing between mayor-council and commission governed cities.

<sup>6</sup> *Ibid.*

ment and traveling, provide him with an automobile, and occasionally place an official mansion at his disposal.

As compared to the chief executives of private enterprises, mayors undoubtedly are underpaid. The question of proper compensation is easier to raise than to answer. Consideration should be given to the size of the city, the demand upon the mayor's time and energy, the degree of his power and responsibility, the expense to which he normally is put in a personal way, and the sacrifice of private interests involved in public service as mayor. Mayors are expected to contribute generously to associations raising funds, and their personal expenses in connection with elections and entertainment may run high. Not being career men, as indicated by an average tenure of 3.9 years in cities over 10,000, their temporary public service may involve sacrifice of their business interests, depending, of course, on their private occupations. In this connection, it should be noted that the office of mayor seldom is a political stepping stone to higher public offices of importance.

Apart from the question of fair treatment to mayors as individuals, there is the problem of the relationship between the salary which is paid and the quality of service which the public is likely to receive. In favor of high salaries, it is claimed that men of greater competence will be attracted, that the higher the pay the greater the effort, and that properly compensated mayors will be less likely to succumb to the temptation of using their powers for private gain at public expense by engaging in "honest or dishonest" graft. Those who oppose high compensation argue that the rate of pay has little or no bearing on the caliber of mayors and their devotion to the public welfare, that these matters are a product of political circumstance, and that the theoretical advantages of high pay can be realized only in association with other and more drastic reforms. To what extent these and other arguments pro and con have influenced the determination of the mayor's salary in particular cities is difficult to say.

**Powers and Duties.** The powers and duties of the mayor are assignable to two major categories, viz., (1) those pertaining to the determination of policy, and (2) those relating to administration. Comparatively few mayors are at present endowed with the judicial power which normally was conferred on them during the colonial and earlier national periods.

The strength or weakness of the mayor's position under the mayor-council system depends primarily on the degree of his administrative power and only secondarily on the formal part assigned him in the legislative process. A weak mayor's administrative function is largely confined to the giving of advice and to supervision, whereas that of the strong mayor is definitely directive and managerial in character. The usual distinction between strong and weak mayor types of government is entirely a matter of the mayor's legal position. Influence as distinguished from authority is not taken into consideration. Of course, the latter is recognized to be an important source of the former.

The measure of a particular mayor's influence is determined not only by

his legal powers, but also by such factors as personality, popularity, experience, and political circumstance. A mayor whose position is weak in the legal sense may become extremely influential in spite of this handicap. On the other hand, a mayor with ample legal authority may prove incapable of developing this obvious source of influence to its fullest extent.

(1) **Legislative Powers.** Weak and strong mayors possess essentially the same legal powers in relation to the formal process of policy determination. Practically all mayors are authorized to make recommendations to the council and to call special council meetings. A large proportion of them are empowered to veto ordinances and resolutions which the council has adopted.<sup>7</sup> In addition, many mayors preside over council meetings, a substantial majority are given a vote in case of a tie, and a few are full-fledged members of the council.<sup>8</sup> Of the mayors who neither preside nor hold regular seats in the council, some have the right to attend meetings and take part in discussion and a few enjoy the privilege of introducing ordinances for council consideration.

(a) **The Veto Power.** The most important of these legislative powers probably is the veto. Although almost always suspensive rather than absolute in character, it provides the mayor with an excellent opportunity to prevent the adoption of policies of which he disapproves. If a two-thirds or three-fourths vote is necessary to override, as frequently is the case, the mayor's opposition constitutes a difficult barrier for the council to overcome, especially if the chief executive be popular and politically powerful. Even if an ordinary majority suffices, as in some cities, councilmen may hesitate to pass a measure over the veto.

Ordinarily, the mayor must accept or reject an ordinance as a whole.<sup>9</sup> However, a common exception to this rule is the power to veto items in appropriation ordinances. Mayors who are empowered to prepare the budget and also to wield an item veto possess extensive control over the expenditure program. If, in addition, the council may merely strike out or reduce proposed expenditures, as in Boston and a few other cities, or change the mayor's proposals only by an extraordinary majority, the mayor becomes something of a financial dictator.

Charters commonly provide that every ordinance or resolution adopted by the council must be submitted to the mayor for approval. If, within the time allowed him for consideration, often three, five, or ten days, but sometimes longer,<sup>9</sup> he affixes his signature, the ordinance or other act becomes law; if he takes no action within the prescribed time, it becomes effective despite

<sup>7</sup> The veto is denied in 24.4% of the mayor-council cities having a population over 10,000, *ibid.*, p. 42, Table 3. In some municipalities the mayor's veto is confined to measures of certain types, e.g., ordinances or budget items.

<sup>8</sup> In mayor-council cities over 5,000, 76% of the mayors directly elected by the voters possess a vote in case of a tie and 9.8% may vote on all issues, *ibid.*, p. 42, Table 2. The mayor is given the same voting privileges as other councilmen in the small percentage of cities which provide for his selection by the council.

<sup>9</sup> In New York City the time allowance is 30 days after presentation of a resolution or, in the case of a local law, after the public hearing which the mayor is required to hold. Notice of the hearing must be given within ten days after the local law has been presented to him.

his refusal to sign it; and if he exercises his veto, he must return the measure to the council or some designated officer, e.g., the city clerk, with a written statement setting forth his reasons for disapproval.

Charters frequently regulate the time and method of consideration of a vetoed measure by the council. Some councils may reconsider at any meeting but others are required to take action within a specified number of days or at the next regular meeting. Charters usually provide, too, that the vote to repass a vetoed measure shall be taken by ayes and noes and recorded in the journal.

(b) **Other Legislative Powers.** Of the other powers of the mayor in relation to the formulation and adoption of policies, perhaps the most important is the privilege of recommending measures and providing information. A popular mayor capable of a forceful presentation of his views may be able to exert effective pressure in this way. The attention of the public is directed to the policies which the mayor favors and to the council's reaction to his proposals.

The usual power to call special meetings of the council and the less common powers of introducing ordinances and participating in council discussions add in differing degrees to mayoral influence in the determination of policy. A special meeting affords a means of focusing attention on specific issues, especially because of the typical rule which confines council action to consideration of matters which pertain to the purposes for which the meeting was called. Since regular council meetings occur so frequently, calls for special ones seldom are issued. The power to introduce ordinances is advantageous, but the many mayors who lack it experience little difficulty in finding a councilman willing to make the introductions which are desired. As for the privilege of taking part in discussion, its utility to mayors of the persuasive type is obvious. It has the additional value of bringing the executive and legislative organs of government into direct and close contact.

The extent to which mayors who serve as presiding officers gain influence thereby over and above that which is attributable to participation in council deliberations depends partly on such variables as personality and political circumstances and partly on the powers vested in the person who presides. If the rules of procedure permit the mayor to appoint the members of council committees and give him ample leeway in referring proposed ordinances to these committees, his influence is greater than if his chief duties as presiding officer are to decide points of order and to put questions to a vote. The value of the casting vote in case of a tie depends on the size of the council and on its political complexion.<sup>10</sup> In the larger cities the mayor seldom is the presiding officer of the council. The case of Chicago is an outstanding exception. It is rather significant that most charters which arrange for the mayor to preside belong in the weak mayor-council category.

The foregoing powers undoubtedly strengthen the hand of the mayor in

<sup>10</sup> The privilege of the casting vote in the event of a tie is not confined to mayors who preside over council meetings. In the case of a council of three, including the mayor, tie votes may occur frequently.

relation to policy-making. As will appear from a subsequent discussion, however, the magnitude of his influence depends more on his administrative position and his political potency than on his formal legislative functions.

(2) **Administrative Powers.** The authority of the mayor in the administrative field includes the appointment and removal of officials, the direction and supervision of administration, the enforcement of laws and ordinances, the power of investigation, and preparation of the budget. Not all of these powers are possessed by every mayor. Moreover, the extent of a particular power is by no means the same in all mayor-council cities. Various other powers and duties of a miscellaneous character, many of them of a routine type, also fall in the administrative category.

(a) **Appointment of Officials.** The strength or weakness of the administrative rôle of the mayor is determined in large measure by the nature and extent of his powers of appointment and removal. If these powers be denied or limited to an appreciable extent, the mayor is deprived of a major aid to the exercise of effective and sustained control over the administrative personnel of the city. Under such circumstances, a charter provision to the effect that the mayor is chief executive of the city means little in practice.

Weak as well as strong mayors enjoy some power of appointment. The crucial question is the extent of this power in terms of the number and character of the positions which the mayor may fill and the discretion which he enjoys in the selection of his appointees. In most cities the mayor shares the power of selecting administrative officials with the voters, the council, and, occasionally, some other agencies.

Of the 2,033 cities with a population over 5,000, about three-fifths of which operate under the mayor-council plan, 42.7% elect no city officials other than the mayor, councilmen, and members of the school board. In the remaining municipalities, nearly 60% of the total, one or more administrative officers are chosen by the voters. The officials most frequently elected and the percentage of all cities providing for this method of selection are as follows: treasurer—41.4%; city clerk—27.5%; assessor—17.1%; auditor—13.9%; attorney—11%; controller—5.1%; police chief—5%; public works director—2.7%; and welfare directors—2.6%. Ten cities report election of the city engineer.<sup>11</sup> These statistics include council-manager and commission governed cities as well as those using the mayor-council plan, but if only the latter had been considered the reported percentages probably would have been higher.

The charters of many cities provide for the appointment of one or more administrative officers by the council. Among the officials most likely to be selected in this way are the treasurer, attorney, controller, clerk, and the members of various commissions and boards, for instance, the civil service commission, the city planning commission, and the board of health. In some cities the council chooses practically all department heads and subordinates. Ordinarily, however, the rôle of the council in regard to administrative

<sup>11</sup> *Ibid.*, p. 47, Table 8.



appointments is confined to approval of the appointees selected by the mayor. In many municipalities even this power is denied to the council.

The fact that certain administrative officials and commissions are chosen by the voters and/or the council does not necessarily mean that the mayor's position in a given city is weak. Far more significant is the number of such officials and the part assigned to them in the general scheme of government. Popular election or council appointment of the police chief, the director of public works, the health officer, and the director of finance signifies a serious curtailment of mayoral authority, whereas choice of the city clerk, the treasurer, or the library board by either the council or the voters means little as far as the mayor's general position is concerned.

The appointive power of strong mayors extends to virtually all department heads and often to major subordinates within the several departments. Even if the latter are placed within the appointing power of the department heads, the mayor, if he so desires, usually is able to dictate the appointments which are made. A mayor may be authorized to fill a fairly large number of offices and still be of the weak type. He may lack the right to select the holders of key positions in the administrative structure, and his appointive power may be further restricted by reason of the long term of subordinates and in other ways which will be discussed in the following paragraphs.

A given mayor may be unable to select the incumbents of every office which is filled by mayoral appointment. This situation arises when the term of a subordinate exceeds that of the mayor. It is by no means uncommon, for example, to find that administrative departments are headed by boards of three or more members serving a term which is longer than the mayor's and so arranged that one member retires each year. Thus, if there were five members appointed for five years, a mayor elected for a two-year term would be able to select only a minority of the members, viz., two. Instead of dealing with men of his own choice, he would find it necessary to get along with officials selected by his predecessor. Such an arrangement weakens the position of the mayor, particularly if his removal power is subjected to restrictions.

In some cities the mayor is legally free to select any persons he desires for the positions which fall within the scope of his appointive power, subject sometimes to minor qualifications which are prescribed by law. Most municipalities, however, check his discretion by the requirement of approval by the council. The significance of this check in practice depends on various extra-legal factors. Among them are the political complexion of the council, the popularity and personality of the mayor, and his general ability to cultivate the good will of councilmen. Ordinarily, councils take advantage of their approval power, and mayors find it politically expedient to pay heed to the recommendations which council members make and to anticipate the council's reaction to contemplated appointees.

Proponents of the requirement of council approval look upon it as a safeguard against poor appointments and as a means of preventing the mayor

from becoming too powerful. An expansion of mayoral authority is viewed as a menace to democracy. Experience with this restraint indicates that it is of dubious value. It divides responsibility and often leads to bitter rifts between the mayor and council. A divided responsibility in the matter of appointments is a more serious barrier to effective popular control of the city government than a powerful chief executive of the elective type. There is no evidence that the quality of appointments has been raised. Quite the contrary, in fact. Moreover, it is unfair to hold the mayor accountable for administrative results if the council prevents him from selecting men in whom he has confidence. Generally speaking, the practical consequence of council approval has been to place a certain amount of patronage at the disposal of councilmen and to weaken the mayor's position as chief administrator. Other and better ways of checking abuses of the appointive power are available.

The establishment of a merit system results in a different type of limitation on the mayor's discretion in making appointments. One of the purposes of such a system is to provide the mayor and other appointing authorities with lists of persons whose fitness for given positions has been established by examination. Its aim is to serve as well as to check. However, when publicized as an impediment to the spoils system, its checking feature receives emphasis. The mayor's appointive discretion obviously is narrowed if civil service regulations require him to appoint the highest or one of the three highest on the eligible list, except for reasons deemed satisfactory by the civil service commission.

To determine the restrictive effects of a merit system, consideration must be given to its procedures, the number and character of the positions to which it applies, the type of personnel agency, and the relation of this agency to the mayor. Many competent persons favor placement of a director of personnel under the control of the mayor. If this be done, the position of the mayor as administrative head will be greatly strengthened. Almost without exception, only minor posts are included within the classified service, and the mayor retains full discretion in the selection of department heads and other key officials, subject only to such other restraints, unrelated to the merit system, as may be established by law.

Among the miscellaneous legal limitations on the mayor's appointive power are the prescription of either general or specific qualifications for particular positions. The Boston charter of 1909, for example, stipulated that department heads and board members "shall be recognized experts in such work as may devolve upon the incumbents of said offices, or persons specially fitted by education, training, or experience to perform the same, and shall be appointed without regard to party affiliation or to residence at the time of appointment." Such general statements concerning qualifications, or more specific provisions to the effect that the city attorney shall be a lawyer and the health officer a physician, mean little in practice. The mayor remains free to make either good or poor appointments.

No matter how extensive the mayor's power of appointment as defined

by law, restraints of an extra-legal character always are operative. For one thing, appointments often are dictated by considerations of friendship, political expediency, and the campaign promises which elected officials so frequently make. Again, a political boss or a group of dominant politicians may in fact exercise the appointive power which the mayor possesses. Furthermore, if the number of positions be extensive, even a "free" mayor is forced to rely heavily on the recommendations of others, especially in the case of minor positions, unless there be a formal merit system. Generally speaking, the mayor is subjected to pressures of various descriptions whenever appointments are to be made. In the face of these pressures the legal discretion of the mayor may be greatly reduced in practice. Finally, there is always the problem of persuading some men to accept public office. A man whom the mayor prefers for a given position may be unwilling to accept the appointment.

(b) **Removal of Officials.** As great in importance as the authority to select administrative officials is the mayor's power of removal. The more extensive this power, the stronger is the position of the mayor as administrative head. A mayor who is unable to dismiss his subordinates, or one who can do so only under severe restrictions, lacks one of the most potent instruments of executive control. There is considerable variation among mayor-council cities with respect to the scope of the mayor's power of removal. Ordinarily, a limited power of appointment is accompanied by an equally, often more, restricted removal power.

In some cities, the mayor's removal power is extremely broad, extending to nearly all administrative officials without limitation as to the grounds warranting its exercise. He may remove department heads and subordinates *at pleasure* for any reasons which in his judgment seem sound. Unless bound by procedural requirements designed to insure publicity, he is under no legal obligation to make his reasons known to either the removed official or to the public.

In most cities, the removal power is limited in one way or another. To begin with, it rarely extends to elected officers or to those appointed by the council or some other agency. This restriction is serious if the officials in question play an important part in administration, but its gravity sometimes is mitigated by granting the mayor authority to make temporary suspensions.

Another type of restraint assumes the form of a charter provision to the effect that the mayor may remove only "for cause" or for specifically stated causes. Such a limitation is intended to prevent removals for personal, political, or other arbitrary reasons, and, as commonly interpreted by the courts, requires notice, presentation of charges, a reasonable opportunity to be heard, and a cause which bears immediate relation to the proper administration of the office involved. Although the mayor is generally held to be the final judge of the sufficiency of evidence in support of the preferred charges, the courts usually will pass judgment on the validity of the cause and the legality of the proceedings. If procedural details have been set forth

in the charter or other applicable law, substantial conformity thereto is essential to a valid removal. To avoid possible legal complications, some mayors who may make removals only for cause have adopted the ingenious policy of requiring their prospective appointees to place in their hands an undated letter of resignation.

A very common check on the removal power of the mayor is the requirement of approval by the council. This arrangement divides responsibility, enables the mayor to blame the council when criticized for failure to make needed removals, and definitely weakens his position as administrative head of the city government. If the relations between a given mayor and council are unfriendly, the mayor may hesitate to use his power of dismissal because of the risk that the council will disapprove and place him in the unpleasant predicament of having to get along with a resentful subordinate. Every time the council refuses to support the mayor in the matter of removals, the quality of his relations with the administrative personnel is impaired.

In many cities in which the merit system has been established, the desire to provide security of tenure against dismissals for political reasons has resulted in the imposition of restrictions which make it difficult for the mayor to remove officials and employees in the classified service. Besides stipulating the causes warranting removal and requiring the presentation of written charges and a formal hearing, the law frequently places the power of final decision in a civil service commission which is independent of the mayor. In some jurisdictions, too, the official or employee against whom removal proceedings have been instituted may eventually carry his case to the courts. The price of protection of this type for the civil servant is a reduction in the effectiveness of administrative control by the chief executive and other superior officers. Since departmental heads and other high officials rarely are included within the classified service, the mayor's power to dismiss them is unaffected by civil service provisions.

(c) **Law Enforcement.** Mayors almost always are charged with the duty of maintaining order and seeing to it that laws and ordinances are enforced. Their ability to act in fulfillment of this responsibility often is seriously curtailed because of the inadequacy of their powers. For example, in the few cities which have an elective chief of police, the mayor is in no position to exercise effective control over the police force. This illustration represents an extreme case, but the numerous weak mayors in the United States are handicapped in many ways and to varying degrees by reason of their limited legal competence. Power commensurate with the responsibility to enforce laws should be conferred on the mayor.

(d) **Direction and Control of Administration.** The mayor, as chief executive, is in principle the head of the administrative branch of the city government. In this capacity he is supposed to direct, coordinate, and supervise the personnel engaged in administering the policies which the council has adopted.

The over-all managerial function of the mayor, to be effective, requires

the possession of authority which many mayors lack. A mayor needs power to appoint and to remove, to issue rules, regulations, and orders, to prepare the budget, and to control departmental spending. Without authority of this type, a mayor is administrative head chiefly in name. Such is the plight of the numerous mayors under the weak mayor-council plan. They may advise and supervise, but their powers of compulsion are limited. In the event that subordinates refuse to follow their leadership, they are unable to take appropriate remedial action.

(e) **Power to Investigate.** An aid to the control of administration is the power of investigation which most mayors possess. Charters commonly provide that the mayor shall have authority to examine and inspect the affairs, books, records, and papers of any officer, employee, or agent of the city and to compel the attendance of witnesses and the production of books, papers, and other evidence. By properly using this power and publicizing his findings, a competent mayor may be able to exert some degree of influence on the course of administration. However, mayors who are merely armed with a power of investigation normally can accomplish little in the way of effective management of the administrative forces of the city government.

A related power which mayors usually possess is that of requiring department heads to submit reports and to attend conferences. This authority undoubtedly has value as a means of obtaining information, but the utility of the report and the conference as instruments of administrative control is difficult to estimate. These devices probably are used to advantage by many mayors. Although some cities report that cabinet meetings attended by department heads are held by their mayors, the individual conference is far more common. The personal taste of the mayor determines the type and frequency of conferences.

(f) **Preparation of the Budget.** In recent years there has been a growing tendency to confer on the mayor the power of preparing the budget, especially in those cities in which there has been a general concentration of administrative authority in the mayor's office. Budgets are work programs stated in financial terms, and mayors who enjoy the right to prepare them are strengthened in their relations with administrative departments and the council. Although councils usually are free to accept, reject, or alter the mayor's proposed budget in any way, the chances are fairly good that many of his major recommendations will be adopted. In any event, he can disclaim responsibility for the city's financial program to the extent that his suggestions are disregarded.

The potential effectiveness of the power to prepare the budget depends on various considerations in addition to the financial powers of the council. Among the determining factors are the facilities for preparation placed at the disposal of the mayor, his other powers, his relations to the several administrative departments and agencies, and a variety of extra-legal forces, including the mayor's personality, executive ability, and political strength.

(g) **Miscellaneous Powers and Duties.** Mayors generally possess a number of other powers and responsibilities, mostly of minor importance, which often prove burdensome from the standpoint of the demand on their time and energy. As official head of the city, the mayor is the agent of communication with other units of government and the city's representative at conferences of various types and on ceremonial occasions. Welcoming distinguished visitors, laying cornerstones, and speaking at banquets are among the social duties of the chief executive.

Mayors frequently serve as *ex officio* members of a variety of boards, such as the sinking fund commission, the art commission and the city planning commission. In this capacity they are afforded an opportunity to influence the actions of these bodies even though they may lack control over them.

Every mayor also is called upon to perform a variety of routine duties which are mostly ministerial in character and of minor significance. Examples are the approval of market leases, deposits of city funds and the bonds of city officials, and the signing of contracts, bonds and bond coupons, municipal warrants, and other documents.

Finally, most mayors are empowered to pardon offenses against municipal ordinances and to remit fines, forfeitures, and penalties. Some mayors, especially those of smaller municipalities, possess the powers of a justice of the peace in disposing of petty criminal and/or civil cases. The mayor of New York City is a magistrate. Generally speaking, the conferment of judicial power on the mayor is no longer considered desirable.

**Strong and Weak Mayors.** The authority of the mayor varies so greatly from city to city that no particular combination of powers can be described as typical. Nor is it possible to draw so sharp and precise a distinction between strong and weak mayors that the classification of particular mayors is easily accomplished.

The extreme cases present no difficulty. For instance, there can be no question about the rating of a mayor possessing the following powers: appointment, subject to no restrictions of any kind, of the heads and subordinates of all administrative departments; removal at pleasure of all appointees; issuance of regulations and orders; investigation of any office and employment; enforcement of laws and ordinances; preparation of the budget and control over departmental spending; and a suspensive veto, including the item veto of appropriation ordinances, which can be overridden only by an extraordinary majority of the council. A mayor equipped with such authority, assuming he exercises it, would be a very strong chief executive. On the other hand, a mayor obviously would be weak if he could appoint and remove only a few department heads and subordinates subject to approval by the council, if his control over other departments were limited to investigation, if he lacked authority to prepare and to execute the budget, and if his veto could be overridden by a simple council majority. The power of most mayors falls somewhere between these extremes.

Although both strong and weak mayors commonly possess a suspensive

veto, this legislative power was included in the foregoing illustrations to indicate that the size of the council vote required to repass a vetoed measure has some bearing on the strength or weakness of the mayor's general position. Nevertheless, the primary consideration in rating mayors is the degree of their authority in the administrative field. A mayor is potentially "strong" if his appointive and removal powers are broad and if his control over administration is extensive. Every additional power, together with unusual restrictions on the authority of the council, merely adds to the strength of his position.

Even though the council is assigned the general function of policy-determination under both the strong and weak mayor plans, the strong mayor generally is able to exert a powerful influence in the shaping of policy. His ability to do so is chiefly attributable to the potent political forces at the disposal of an elective official who enjoys ample administrative authority. Apart from the increasing dependence of legislative bodies on administrative officials by reason of the complicated and technical character of contemporary governmental problems, a mayor who directs and controls administration wields power which has far-reaching effects upon the life of an urban community.

Power begets influence with pressure groups and with councilmen. In making appointments to office, for example, a mayor is unlikely to heed the suggestions of councilmen who fail to support the policies which he advocates. In addition to the backing of those who seek favors, the mayor usually can count on the assistance of the political organization which placed him in office, and if a majority of the council belong to the mayor's party, he may have comparatively clear sailing.

Moreover, the interest of the municipal public is focused on the mayor who is expected to provide political leadership. The people usually hold him responsible for results, whatever his powers may be. Under these circumstances, a powerful mayor with popular appeal experiences relatively little difficulty in getting the council to follow his leadership. Of course, the personal equation enters into the situation and successive mayors in a given city, although enjoying the same legal authority, do not all make the most of their opportunities. Sometimes, too, a mayor is merely the official instrumentality through which a political boss runs the governmental show.

Apart from the legal authority of the mayor's office and various extra-legal sources of influence, the effectiveness with which a mayor functions as chief executive is determined by a number of other considerations. For one thing, much depends on the type of administrative organization of which the mayor is the head. The manageability of this organization is determined by the number of departments, the distribution of functions among them, and the type of controlling authority at the head of each department. If there are too many departments, e.g., 30, the mayor will encounter difficulty in discharging the function of direction and supervision, no matter how broad his authority. It isn't an easy matter to maintain satisfactory relations with a large number of department heads. Nor is effective control promoted by

placing boards rather than single officials at the head of departments. If a mayor must deal with administrative units in charge of three or five men, he is at a disadvantage in comparison with the mayor of a city in which all or most departments are headed by a single director. The mayor also will be hampered in his rôle as chief executive if there be an improper assignment of administrative activities to the several departments. If unrelated functions are grouped together or if responsibility for major activities is divided among two or more departments, complications arise which hinder executive direction and coordination of the administrative services.

Another factor which has a bearing on the mayor's effectiveness as chief executive is the availability of appropriate tools of management. Without a properly staffed and financed budget bureau or its equivalent, a mayor is handicapped in preparing the budget. Unless adequate means of financial control have been established, he will experience difficulty in seeing to it that funds are expended wisely and economically within the limits of the budget which the council has adopted. Unsatisfactory accounting and purchasing systems, for example, have prevented many competent mayors from achieving the results of which they were capable. In short, poor administrative organization, improper procedures, and lack of information are impediments to otherwise effectual powers.

**The Mayor's Work-Load.** Serving as mayor of a city, especially a large one, is a job consuming time and energy, if taken seriously and if the mayor is something more than a figurehead. The mayor's day, although usually a busy one, is not the same for every mayor. Making speeches, attending dinners, and engaging in conferences are activities common to all mayors, as are the reception of callers and interviews with newspaper reporters. Some chief executives spend a great deal of time in their offices, especially those who study reports and attend to routine matters themselves. Others prefer to get out in the field and inspect the administrative mechanism in action. Attendance at council meetings, service on boards, conferences with department heads and political leaders, planning policies, preparing and examining reports, and conducting correspondence are among the varied activities of a position which is anything but monotonous in character.

The heavy demands on the time and effort of the mayors of large cities, especially because of their dual rôle as administrative heads and political leaders, have led to the suggestion that the office of administrative assistant to the mayor be created.<sup>12</sup> Appointment of such an assistant on a professional basis is recommended by the Model City Charter Committee of the National Municipal League for cities which prefer the mayor-council to the council-manager plan of government.

An officer of this type would relieve the mayor of a substantial administrative burden and provide executive control of an expert character. If the same professional assistant were to serve under successive mayors, as

<sup>12</sup> L. D. Upson, *A Proposal For An Administrative Assistant To The Mayor*, Detroit Bureau of Governmental Research, Report No. 123, 1931. A summary is printed in *American City*, June, 1931, Vol. 44, p. 93.



contemplated, administrative policy would become more stabilized than it now is. Appointment on a political basis and insecurity of tenure would prevent realization of all of the potential advantages of this proposal. In that event probably the only good effect would be a lightening of the mayor's workload. Even so, it is difficult to see how the chances of obtaining poor government would be increased. If a competent assistant were appointed, the results would prove beneficial to both the public and the mayor. The latter then could devote much of his time and effort to the maintenance of public contacts and to the formulation and promotion of policies without the usual sacrifice of proper executive control over the operating departments.

Apparently, the proposal remains untried. However, a few cities, notably San Francisco and New York, have taken short steps in the direction of this innovation.

Although the charter of San Francisco provides for mayoral appointment of a chief administrator, this official is placed in charge of only a limited number of departments, *vis.*, health, works, purchasing, properties, and finance and records. He is appointed by the mayor for an indefinite term, but may be removed only by a two-thirds vote of the council on the basis of written charges and after a public hearing.<sup>13</sup>

The New York charter of 1936 contains the following provision: "The mayor may appoint a deputy mayor who shall possess such of the powers of the mayor and for such times and subject to such conditions as shall be expressed in written authority to be signed by the mayor, excepting the power of appointment or removal, the power to approve or disapprove local laws or resolutions, the power to act as a magistrate and the power to hold any hearing which the mayor is required by law to hold."<sup>14</sup> The reason given by the Charter Revision Committee for creation of the position of deputy mayor was to relieve the mayor from the excessive burden of routine duties. Acting under the authority conferred on him, Mayor La Guardia appointed Henry H. Curran, a lawyer with a broad background of experience in New York city affairs, as the first deputy mayor. In neither New York nor San Francisco is provision made for selection of an administrative assistant on a professional basis.

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## CHAPTER XVIII

### MAYOR-COUNCIL GOVERNMENT: THE COUNCIL

#### *Outline*

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#### **Merits and Defects of Mayor-Council Government**

AS INDICATED in the discussion of the mayor's office, the importance of the council under the mayor-council plan varies greatly from city to city. The stronger the mayor, the weaker the council, and vice-versa, but even in cities in which the concentration of power in the hands of the mayor has reached a high degree, the council's part in the governmental process is by no means insignificant. Legally, at least, it possesses substantial power in regard to the determination of policy, the levying of taxes, the borrowing of money, and the appropriation of public funds. Under the weak mayor form, it also plays an important part in the process of administration.

#### **THE COUNCIL**

**Structure of the Council.** The unicameral council prevails in practically all cities today, but at the turn of the century about one-third of the

cities having a population exceeding 25,000 reported the existence of two-chambered bodies. Bicameral councils survive in only 13 municipalities with a population over 5,000. Eleven of the cities which adhere to this outmoded structure are located in the New England states. The other two are Atlanta, Georgia, and New York City.<sup>1</sup>

Whatever the merits of the bicameral legislature in the field of national and state government, the superiority of the single-chambered city council seldom is questioned. It is reasonably safe to predict the eventual disappearance of the few remaining bicameral bodies.

The number of councilmen in mayor-council cities with a population greater than 5,000 varies from three to 50. Chicago enjoys the doubtful distinction of having the largest council in the United States. The median size for all mayor-council cities with more than 5,000 inhabitants is 7; for the population group over 500,000—19; from 250,000 to 500,000—11; from 100,000 to 250,000—13; from 50,000 to 100,000—12; from 25,000 to 50,000—9; from 10,000 to 25,000—7; and from 5,000 to 10,000—6.

Generally speaking, the number of councilmen decreases with the size of the city, but there is a considerable gap between the largest and the smallest councils in even the lowest population groups. The range in size for each of the groups for which the median figure was given above, beginning with cities over 500,000, is as follows: 9 to 50; 7 to 26; 5 to 41; 5 to 28; 4 to 32; 3 to 28;<sup>2</sup> and 3 to 16.

The question of proper size involves two considerations of major importance. One is the relationship between size and the representative character of a council. The other is the effect of size on the efficiency with which a council functions.

It often is asserted that large councils are more representative than small ones. This claim is valid only in a limited sense. The proportion of councilmen to population is larger. Presumably, smaller groups of voters will be able to obtain representation. Whether they really can do so depends on the method of election which is used. With proportional representation, the opportunity is genuine. If the single choice-plurality system is in use, there is no correlation between large size and representative character, except that under the single-member ward plan more localities will receive representation. Although opinions differ concerning the proper criteria of representation, it is exceedingly doubtful if the people in cities with large councils, such as Chicago (50), Cleveland (33), St. Louis (29), and Milwaukee (27),

<sup>1</sup> The New England cities are: Danbury, Connecticut; Augusta and Waterville, Maine; Everett, Malden, Northampton, and Springfield, Massachusetts; and Central Falls, Newport, Pawtucket, and Woonsocket, Rhode Island. The *Municipal Year Book*, 1948, p. 44, also lists Worcester, Massachusetts, Keene, New Hampshire, and Richmond, Virginia, but these cities recently adopted council-manager charters with unicameral councils. See *National Municipal Review*, Vol. XXXVII, No. 1, January, 1948, p. 3.

<sup>2</sup> The *Municipal Year Book*, 1948 (Chicago, the International City Managers' Association, 1948), p. 44, Table 5. This Table reports a range of from 2 to 50 for all mayor-council cities. The only city listed in Tables IV and V, pp. 51-81, as having a council of two is Lake Charles, La. Actually the governing body of this community is composed of the mayor and two councilmen, but the mayor has a casting vote only in case of a tie. This vote assumes great significance in view of the fact that there are but two councilmen. For all practical purposes the body may be classified as a council composed of three persons. It is for this reason that the author of this text has taken the liberty of reporting the range in size as being from 3 to 50 rather than 2 to 50 as stated in the *Year Book*. Otherwise the figures in the Table have been followed.

are any better represented than the cities of Detroit and Pittsburgh with councils of nine members. From the voter's standpoint, it is easier to fix the individual responsibility of members of a small rather than a large body. This fact assumes importance in connection with popular government of the representative type.

As for the effect of size on the functional efficiency of councils, the advantage lies with the small ones. Large bodies are unwieldy and wasteful of time. Moreover, they are forced to rely on a standing committee system for the transaction of business, with the result that most decisions actually are made by small groups of members and merely ratified in a formal manner by the entire council. Large councils rarely engage in genuine deliberation. Members of small bodies enjoy greater prestige and participate more effectively in all of the work which the council is required to do. If large councils are to act with dispatch rather than talk interminably, the privileges of individual members require curtailment.

**Selection of Councilmen.** Councilmen are invariably chosen by popular vote. In most cities the single choice-plurality system is utilized, but in some a majority vote is required and in a few the Bucklin system of majority preferential voting is in effect.<sup>3</sup> Elections are conducted on a partisan basis in nearly three-fifths of the mayor-council cities with a population over 5,000. About two out of five provide for the selection of councilmen exclusively by wards, nearly the same proportion elect at large, and slightly more than one-fifth use an arrangement under which some councilmen are chosen at large and the remainder on a ward basis.

The merits and defects of different election methods have been considered in a preceding chapter, and it is unnecessary to discuss them with special reference to the mayor-council plan. The apparent preference for partisan ward elections is largely a result of historical evolution. It should not be interpreted as evidence that this arrangement is advantageous under the mayor-council system.

**Term of Office.** A little more than half of the mayor-council cities of more than 5,000 population elect councilmen for a two-year term; nearly 40% have established the four-year term; and most of the others have fixed the period of service at three years. Only a few choose their councilmen for one, five, or six years. The terms of all members of the council expire at the same time in about two out of five cities.<sup>4</sup> Consequently, a complete turnover in membership is possible at any election.

In most cities terms are staggered in order to prevent a thorough-going change in personnel. Since councilmen often are re-elected, it is doubtful if the overlapping arrangement results in greater continuity of membership. Nor is there conclusive evidence that the presense of holdover councilmen

<sup>3</sup> New York is the only mayor-council city which has used the single transferable vote system of proportional representation. At the fall election of 1947 the voters decided to abandon it.

<sup>4</sup> *Ibid.*, pp. 45-46, Tables 6 and 7.

raises the quality of the council's action. On the other hand, it is clear that the overlapping term interferes with the exercise of effective popular control inasmuch as it prevents changes in the over-all complexion of the council corresponding to shifts of opinion among the voters. A party may remain in control of the council even after losing the support of a majority of the electorate.

**Compensation.** As a rule councilmen receive a nominal compensation. The median for about 1200 mayor-council cities with a population in excess of 5,000 is \$120 per annum. For this same group of municipalities the range of pay is from nothing to \$8,000. Three-fourths of them provide a remuneration of \$300 or less.<sup>5</sup>

Generally speaking, the rate of compensation varies directly with the size of the city. This fact indicates that the primary determining factors probably are the financial resources of the city and the time normally required for discharge of councilmanic duties. Even in the largest cities service on the council is essentially a part-time job. The amount of time consumed is affected by the nature and scope of the council's powers and responsibilities and by the inclinations of the individual councilman. Failure to provide even a nominal compensation sometimes is due to the belief that this policy will discourage the candidacy of individuals who lack civic-mindedness. Persons who favor fairly high salaries argue that better men will seek council seats, that responsibilities will be taken more seriously, and that well-paid councilmen will be less likely to succumb to the temptation of using their positions to obtain income in questionable ways. Whether or not the facts substantiate these contentions remains to be determined. Another consideration in support of adequate compensation is the desirability of making service on the council possible for all classes of the population, regardless of economic status.

**Qualifications.** Since councils are supposed to be representative of the general voting population, the prescribed qualifications for membership ordinarily are relatively simple. Many charters stipulate that any qualified voter is eligible. In terms of specific requirements this provision means any United States citizen, at least 21 years old (18 in Georgia), who has been a resident of the state, the city, and the voting district for a comparatively short period of time. Some cities raise the age and residence requirements above those which are sufficient for voting. A few require the ownership of property or the payment of taxes, but ordinarily no attempt is made to limit service on the council to a select group of citizens. The probable explanation is that restrictive qualifications are commonly deemed to be inconsistent with the principles of democratic government. Another reason is widespread difference of opinion concerning the correlation between any combination of qualifications and the caliber of councilmen. It is easy enough to assert that councilmen should be honest, intelligent, industrious, interested in municipal affairs, and conscientious in the performance of their duties, but

<sup>5</sup> Ibid., p. 48, Table 9.

it is another matter to prescribe legal qualifications which will increase the likelihood of possession of these qualities by candidates for the council.

Most city charters contain provisions concerning the disqualification of otherwise eligible persons. Among the more common disqualifications are pecuniary interest in municipal contracts, failure to pay taxes, and conviction of such crimes as bribery and malfeasance in office. Frequently, too, it is provided that a person cannot sit in the council and at the same time hold some other public office.

Although occasional studies of the caliber of councilmen have been made, none of them has been of sufficient scope to warrant the drawing of reliable general conclusions. The impression of many observers is that the average councilman is a mediocre type of man who often has had considerable experience in ward and precinct politics. Ward committeemen frequently are elected to the council, especially in cities in which the ward system of election is used. The members of councils elected at large also are likely to be men who have served an apprenticeship as party workers. This apparent preference for persons who have established fairly close relations with the political organizations of the major parties is partly attributable to the methods of election in common use.

Comparatively few outstanding citizens or intellectual leaders of a community seek seats in the council. To some extent their unwillingness to serve is due to the low prestige value of being a councilmen. Even fewer are elected. Judging by the experience of a number of communities, their election in larger numbers probably would prove beneficial to the government of cities.

Another impression of many students of city government is that the general quality of councilmen has improved during the last 50 years. There is no conclusive evidence that this impression corresponds to the facts, but it probably is correct. Trustworthy comparisons between the councils of one generation and those of another are difficult to make. The standards of city government have risen since Bryce referred to the government of cities as the one conspicuous failure of the United States. This improved situation tends to support the claim that the councilmen of today are superior in caliber to those of the past. However, too many other causative factors have been operative to justify acceptance of this indirect evidence as conclusive.

**Powers and Duties.** The powers and duties of the council under the mayor-council system vary so much that any enumeration is subject to numerous exceptions as far as particular cities are concerned. In all municipalities, however, the primary function of the council is the determination of both general and financial policy within the scope of authority granted to the municipal corporation. Most councils also possess powers of an administrative character, but it is only under the extremely weak mayor plan that the council participates to a substantial degree in the actual administration of policy.

Unlike state legislatures, councils may exercise only such powers as have been delegated to them either expressly or by implication in the city



charter or other applicable law. Their authority usually is circumscribed by a variety of restrictions of both a substantive and procedural character. The typical charter devotes an article or a section to a declaration of the council's powers. This detailed enumeration, together with other express grants scattered throughout a charter, serves as the chief basis of such implied powers as the council may enjoy. However, in ascertaining the scope of authority conferred on a council, the courts apply the general rule that it possesses all powers which have been delegated to the municipal corporation without assignment to a specific organ of city government. Failure to allocate a given power to a designated agency is construed as meaning that the power in question was intended to be exercised by the council.

Under another general rule of the law of municipal corporations, the council is prohibited from delegating its powers to other agencies. However, the courts have recognized a distinction between discretionary and ministerial powers and permit delegation of the latter. Unfortunately, the line of demarcation between the two types of power cannot be drawn with sufficient precision to avoid legal uncertainty, with the consequence that application of the rule to specific instances often leads to contradictory results in different jurisdictions.

**(1) Regulation of Private Rights.** One of the most important functions of the council is regulation of the property and conduct of private persons in matters arising from the special conditions of life in an urban community. For the most part, private rights and duties are defined by state laws which are applicable to the inhabitants of both rural and urban areas. Nevertheless, there are many problems peculiar to cities or having distinctively urban aspects with which city councils are permitted to deal, either exclusively or in supplementation to state legislation.

Examples of local legislation prescribing the rights and duties of individuals are traffic regulations, fire prevention and building codes, zoning ordinances, health and sanitary regulations, ordinances prohibiting gambling or prostitution, and regulations pertaining to the sale of milk and other foods. These regulations represent exercises of the local police power to promote and protect the safety, health, and general welfare of the urban public. Councils also are empowered to establish the penalties which will be imposed in the event of infraction of municipal ordinances.

**(2) Control of Utilities and Granting of Special Privileges.** Although public utilities are controlled to a large extent by state authorities, municipal corporations still possess the power of supplementary regulation. Usually, the council plays a significant part in the exercise of this authority. The granting of franchises to use streets and other public property and the regulation of conditions of service to the public are important responsibilities of the council in connection with the relations between the city and such private enterprises as street railway, bus, taxicab, gas, telephone, and electric power companies. Municipally-owned and operated utilities are subject to more extensive control by the council.

A related power is the granting of special privileges with respect to the use of public property by various other businesses and private persons, e.g., permission to construct an entrance to a basement, to construct a vault under the sidewalk, to locate a gasoline pump at the curb, or to erect bay windows, signs, or steps encroaching on a street. There is considerable variation in the authority of councils concerning the granting of franchises and other special privileges of the type which have been mentioned.

(3) **Control of Finances.** All councils enjoy substantial control over the financial phases of city government. Generally speaking, not a penny may be spent, nor a tax levied, nor a dollar borrowed without the council's approval. However, the financial powers of city councils are in no sense comparable to those of the United States Congress or the legislatures of the several states. City charters, state laws, and state constitutions ordinarily contain binding restrictions with respect to the kind of taxes which may be levied, the maximum permissible tax rate, and the amount and purpose of indebtedness. Then, too, mandatory expenditures often are imposed on city authorities. Subject to such limitations and to the qualified veto of the mayor, councils make appropriations, levy taxes, borrow money, fix the salaries of officials and employees, approve the transfer of funds, and often perform other functions relative to financial affairs, such as the designation of banks for the deposit of city funds, approval of the payment of claims and judgments against the city, the letting of contracts, and arranging for the annual audit of city accounts.

Since the mayoral veto may be overridden in most communities, the power of final decision in these matters ordinarily rests with the council. Frequently, however, popular approval is required in connection with proposed bond issues or the fixing of tax rates above a specified limit. Sometimes a state administrative agency is vested with powers of review. In some cities, e.g., Chicago, the council not only legalizes, but also prepares the budget. More commonly, the mayor, an administrative board, or some other agency submits a budget to the council which is free to make such changes as it sees fit and, if the mayor disapproves its action, to override his veto. It is in only a comparatively small number of cities that the council's hands are tied by charter provision to the effect that it may decrease or delete, but not increase or add new items to the expenditures proposed by the budget-preparing authority. Control of the purse strings continues to be one of the most important powers of the council.

(4) **Awarding of Contracts.** All cities possess power to enter into contracts for the construction of public works, the purchase of equipment, supplies, and materials, and the procurement of various services rendered by private enterprises, such as telephone facilities, insurance policies, and the like. The awarding of these contracts, if they involve more than a specified sum, constitutes another important phase of the work of many city councils. However, in some municipalities the council is denied this power.

or required to share it with other agencies. In all cities it must observe such procedural restraints as have been established by law or charter to safeguard the interests of the public and prevent the abuses which often attended the awarding of contracts in the past.

(5) **Control of City Property.** Control over city property is a power of city councils which, like the letting of contracts, bears an intimate relation to, if it does not constitute a special phase of, their general financial authority. The acquisition, disposal, and lease or rental of property by a city usually require the approval of the council. Ordinarily, it also is empowered to regulate the use and make provision for the management of such property as the city owns. Its authority is not the same in all communities and some property, e.g., parks, may be placed under the control of some other agency of municipal government.

(6) **Authorization of Public Improvements.** Another function of the council, which occupies much of its time, is the authorization and approval of public improvements of one type or another. Among them are the opening, closing, widening, and paving of streets, the establishment of street grades, the construction of sidewalks, bridges, and sewers, the creation of parks, and the building of police and fire stations, the city hall, and other structures. Councils often are required to approve plans for public buildings and other improvements, real estate plats, and various private undertakings which are intimately related to the physical growth of the city.

If a municipality is authorized to finance public improvements in whole or in part by special assessments, action by the council is usually necessary to fix the proportion of the cost to be met in this way, to establish the area within which the assessment is to be made, and to levy the special assessment against particular parcels of property. The acquisition of needed land by purchase or through condemnation proceedings likewise depends on council approval.

(7) **Control over Administrative Organization and Procedure.** The authority of councils extends to matters of organization and procedure. Of course, the basic processes and major structural features of city government, being fixed by charter provision, are beyond the council's control, except in so far as it may participate in the making of charter amendments. However, many important questions of organization and procedure are left for its determination.

Some charters give the council a free hand in prescribing the number and character of administrative departments and bureaus, in allocating activities to the several departments, in creating offices and defining their powers and duties, and in determining the manner of conducting administrative business. Usually, however, some or all of the administrative departments and numerous offices are established by charter provision, as are the basic procedural steps in such vital matters as budgeting, purchasing, and the levy of special assessments. Even so, the council possesses extensive authority to prescribe

a variety of organizational and procedural details. The degree of its power in these matters varies greatly from city to city.

**(8) Miscellaneous Powers.** Other powers which councils frequently possess are the appointment and removal of officials, the investigation of administrative departments and offices, and the direction and supervision of administration. Besides these, minor powers of different kinds, such as the designation of official newspapers, approval of the bonds of officers, the granting of licenses, and the review of assessments, are conferred on the councils of particular cities.

Ordinarily, the council's share in the selection and dismissal of city officials and employees is limited to the approval or disapproval of appointments and removals made by the mayor, but in some cities the council is authorized to make a fairly large number of direct appointments and to remove both elective and appointive officers for cause. Under the strong mayor plan, the council's powers of appointment and removal extend to few, if any, officials and employees other than those who assist it in the performance of its duties. It frequently lacks even the power of approval. Under the weak mayor system, these powers are possessed in greater degree, attaining a maximum in those municipalities in which the mayor's position is extremely weak: In the Pennsylvania boroughs, for example, the appointment and removal of practically all administrative officials rests with the council.

All councils, whether associated with a strong or weak mayor, are empowered to investigate the operation of administrative departments and offices and to require reports from administrative officials. The power of investigation, which includes authority to compel the attendance of witnesses and the production of records, is a useful check on the administrative branch of the city government. It is most likely to be used when the relations between mayor and council are unfriendly.

The direction and supervision of administration by the council or its committees is less common today than a century ago, but the practice continues in a surprisingly large number of communities, especially the smaller ones, e.g., most of the more than 900 boroughs of Pennsylvania. Atlanta, Georgia, is an example of a large city in which the affairs of most administrative departments are dominated by council committees. Even in cities with weak councils and strong mayors, council control over administrative matters is by no means negligible, as evidenced by the authority of the council with respect to departmental organization and procedure, finances, the awarding of contracts, and the authorization of public improvements. Moreover, quite apart from legal power, individual councilmen often exert influence in regard to appointments, purchases, and various other administrative activities by reason of their political connections and the give and take of partisan politics.

**Varying Importance of the Council's Rôle.** To avert misunderstandings which may arise from a general consideration of the powers of councils, the reader is reminded that the importance of the council's rôle depends on

the variety of mayor-council government under which a given city operates. If the concentration of power in the mayor's office is great, the council's chief function is determination of general policy under the leadership of the mayor. If the mayor's position is weak, the council tends to become dominant in both the administrative and legislative fields. Nevertheless, practice does not always conform to legal pattern. Political circumstances, personalities, and other extra-legal factors often bring about results unanticipated by the framers of charters. In some municipalities, for example, a city clerk with long experience in office has proved to be the controlling force in the city government as compared to the political birds of passage who succeed one another in the more important offices of mayor and councilman.

**Organization and Procedure of the Council.**<sup>6</sup> In performing the functions assigned to it, the city council is governed by formal rules of organization and procedure which are designed to promote the orderly transaction of business, to protect the interests of the majority, the minority, and individual members, and to safeguard the public against modes of action deemed inconsistent with the general principles of responsible government. Certain procedural requirements, especially those intended to prevent the council from acting in a manner contrary to the interests of the public, often are established by charter provision. Charters are likely to stipulate the size of a quorum, the affirmative vote necessary for the enactment of ordinances, the number of readings and minimum lapse of time prerequisite to final action on proposed measures, the recording of ayes and nays on specified propositions, and the means of insuring publicity.

With respect to matters unregulated by charter or statutory provision, the council may prescribe its own organization and procedure within the limits established by the rules of common law. Among these limits are those pertaining to the size of a quorum and the vote required for valid action by the council. At common law a majority of the entire membership constitutes a quorum and a majority vote of those present at a legal meeting, provided there be a quorum, is sufficient for the passage of ordinances, resolutions, motions, and orders by the council. In the absence of controlling charter or statutory provisions, the courts enforce these common law rules.

The organization and procedure of city councils conform in the main to standard parliamentary practices. Although striking departures from the familiar basic principles are uncommon, there is sufficient variation from city to city in matters of detail to complicate the task of general description. The size of the council and the normal volume of business seem to be the chief factors in determining organizational and procedural details. Ordinarily, the proceedings of small councils are characterized by an informality which proves inexpedient in the functioning of bodies with a fairly large membership.

<sup>6</sup>For an excellent discussion of procedure see E. L. Bennett, "Legislative Procedure of City Councils," *Public Management*, July, 1935, Vol. XVII, pp. 199-205.

(1) **Officers of the Council.** The presiding officer and the secretary are the two most important council officials. Very often, the former is chosen by the council from its own membership, but in some cities the president of the council is elected by the voters from the city at large, in many the mayor presides, and in others the vice-mayor, if there be one, is charged with the responsibility of conducting council meetings. The presiding officer guides the transaction of business in conformity with the rules of procedure. He maintains order and decorum, decides questions of parliamentary law, recognizes speakers, puts questions to a vote, possesses a casting vote in case of a tie, often appoints the members of standing and special committees, and commonly enjoys the power of referring ordinances and resolutions to appropriate standing committees for preliminary investigation and consideration. The right to select the personnel of council committees enables the presiding officer to function effectively as a leader in the determination of council policy.

The secretary of the council, commonly given the title "clerk of the council," performs functions which have a definite bearing on the efficiency with which business is transacted. Among his most important duties are preparation of the agenda for specific meetings, the maintenance of appropriate records concerning council proceedings, the dispatch of business to proper committees or administrative officers, the handling of correspondence, and the arrangement for such publicity and advertising as may be required by law. Frequently, the secretary acts as adviser to the presiding officer in matters of parliamentary law. This official is generally appointed by the council, as are deputy clerks, stenographers, typists, messengers, and other employees who serve the larger councils. In many cities, however, the city clerk serves as secretary of the council. This officer, although often selected by the council, sometimes is elected by the voters and occasionally appointed by the mayor or by the mayor with the approval of the council.

(2) **Standing Committees.** The manner in which councils function is partly determined by the extent to which standing committees are utilized. Controlling considerations are the size of the council, the character of its powers and duties, and local custom. Relatively large councils do much of their work through committees in order to expedite the transaction of business. Many small councils function effectively without the committee system. Under the weak mayor-council plan, the administrative rôle of the council is an important factor leading to the establishment of standing committees, especially for the purpose of supervising and investigating the operation of administrative departments.

Contemporary councils seldom establish committee systems as complicated as those found in state legislatures. As a rule, standing committees are few in number and comparatively small in size—not so much because of the better judgment and greater self-restraint of city councils, but chiefly by reason of the limited number of councilmen.

Thus the Pittsburgh council of nine members has established nine standing committees. This council, like some others, seems to have found it politically

expedient to create enough committees to enable each councilman to serve as the chairman of one committee. By contrast, the nine member council of Detroit makes extensive use of the committee of the whole for the preliminary transaction of business. It meets five days a week as a committee of the whole and formally transacts business one night per week. Its president frequently appoints special committees for the investigation of particular projects. These committees often include administrative officials, members of boards, and citizens as well as members of the council.

Philadelphia's council of 22 members has 13 standing committees; Boston's council of 22, 14; Baltimore's council of 21 (including the president of the council), 12; Chicago's council of 50, 19; and Cleveland's council of 33, 9. Each of the Baltimore committees consists of 7 members, whereas those of Chicago vary in size from 11 to 26 and those of Philadelphia from 8 to 14.<sup>7</sup> In the boroughs of Pennsylvania, most of which have a population under 10,000, council committees are more concerned with administration than with legislative matters and the number of standing committees usually corresponds to the number of major administrative functions performed by the borough government.

The part played by standing committees in the functioning of councils varies from city to city and from time to time in any given municipality. In legal theory, the committee is merely an agent of the council established for the purpose of investigation and report concerning matters falling within the council's competence. It always is subject to the complete control of the body which created it. In practice, however, this legal relationship often is reversed, and standing committees actually may be dominant in the field of activity assigned to them. Determining factors are the political composition of the council; the character of the relations between the mayor, department heads and the council; the council's size; the volume and character of business; local custom; and the extent to which most members of the council follow the natural inclination to abide by the recommendations of a small group presumably better informed than the rank and file with respect to the matter under consideration.

A standing committee composed of experienced councilmen enjoying considerable political prestige is likely to have its way a large percentage of the time. Generally speaking, however, councils are not as subservient to their standing committees as are many state legislatures. This observation holds true particularly in the case of small councils which operate in an atmosphere of informality and provide greater opportunity for the exertion of influence by individual members. As previously stated, small councils often dispense with standing committees and merely establish special committees if the normal procedure of collective transaction of business at all stages seems inadvisable.

The frequency with which councils assemble lessens the need for standing committees. Since meetings occur once or twice per week or month, and

<sup>7</sup> Information with respect to the number and size of standing committees was furnished the author by the clerks of the cities mentioned above: the material pertaining to Detroit, was provided by C. J. Ziegler, formerly of the Detroit Bureau of Government Research.

more often if necessary, problems can be dealt with as they arise and the accumulation of a large volume of business is avoidable. Consequently, abandonment of the committee system is feasible for small councils unless their administrative functions are extensive. Individual councilmen are more likely to develop a keener sense of responsibility for all phases of the council's work if the greater part of their time and energy is not absorbed by service on committees. The elimination of committees also reduces meddling in the affairs of administrative departments.

In the case of relatively large and unwieldy councils, committee systems are justifiable as a means of promoting greater efficiency and conserving time through application of the principles of specialization and division of labor. Their primary disadvantage lies in the danger that committees may become too powerful and dominate the body which they are intended to serve.

**(3) Regular and Special Meetings.** City councils meet frequently in sessions of short duration. Regular meetings are provided for by charter provision or council rule and usually are scheduled once or twice a month in the smaller cities and one or more times per week in the larger, depending on the amount of business to be transacted. City charters also authorize the holding of special meetings at the call of designated officials, such as the mayor, the president of the council, or a specified number of councilmen. Usually the purpose of the special meeting must be stated in the notice and the council is prohibited from considering other business.

Whenever either a regular or a special meeting is adjourned to a specified time, the resulting assembly is known as an adjourned meeting which is merely a continuation of the original meeting, whether regular or special, from which it arose. Consequently, the council may consider only such business as it was privileged to transact at the original meeting. It thereby is prevented from evading restrictions pertaining to special meetings by resorting to the device of adjournment to a stated time.

A condition essential to the legality of particular council meetings is proper notification of all members. Special notice is unnecessary in connection with regular meetings for which advance arrangements concerning time and place have been made either by charter provision or by ordinance. In the case of special meetings every member must be duly notified in the manner prescribed by law. Otherwise, unless all unnotified members happen to be present at the meeting in question, such business as may have been transacted lacks validity. The reasons for the rule are the prevention of action by surprise and fraud and the protection of the rights and duties of each councilman as a member and as a representative of his constituents.

**(4) The Council as a Continuous Body.** The effect of councilmanic elections on the transaction of business by a council depends on the provisions of the city charter, pertinent statutes, the council's rules of procedure, and judicial rulings in the state in which the city is located.



In many cities the terms of office are so arranged that only a partial change in membership becomes possible as a result of any scheduled election. Under these circumstances, the council almost always is considered a continuous body which may carry to completion whatever business may have remained unfinished at the expiration of the terms of some of its members. At the same time, the council ordinarily reorganizes to the extent necessary following each election.

If the terms of all members of the council expire simultaneously, the first task of the new council is to organize and to adopt rules of procedure for the conduct of its meetings. As a rule it may dispose of such business as may have been left unfinished by its predecessor.<sup>8</sup> In some jurisdictions, however, legislative proceedings are commenced anew irrespective of the progress achieved by the preceding council.<sup>9</sup>

(5) **Form of Council Action.** Since the action of a council is collective in character, the form of action is a matter of importance in determining whether this organ of city government actually has exercised the powers conferred on it. The will of the council "can be expressed only by acts or votes embodied in some distinct and definite form."<sup>10</sup> Conformity to mandatory charter provisions concerning form is essential in order to bind the municipality, but in the absence of such provisions the vote may be registered in any manner which is clearly expressive of the council's will. Ordinarily, the action taken must be evidenced by some written record of the proceedings and transactions.

Most of the important acts of the council are embodied in ordinances or resolutions. Although these terms often are loosely used, a distinction between them is recognized in the law of municipal corporations. Resolutions deal with matters of a special or temporary significance, e.g., authorizing the employment of an attorney, calling an election for a bond issue, declaring the necessity for a particular public improvement, or taking other preliminary steps in public improvement proceedings. Ordinances commonly are defined as local legislative acts establishing policies and prescribing general and permanent rules of conduct binding on the officers and inhabitants of a municipality. Zoning, building, and traffic regulations, for example, are properly enacted in ordinance form. The procedure for the enactment of ordinances usually differs from that which suffices for the adoption of resolutions. Ordinances represent a more formal type of action and the procedural steps to be observed are more likely to be controlled by charter provision. If the charter of a city requires that certain action be taken by ordinance, any other form of action by the council is insufficient.

A simple motion which is entered on the minutes is adequate for certain types of council action. Examples are a request that a department head provide information concerning some problem and an expression of approval of the recommendations embodied in a report.

<sup>8</sup> *Reuter v. Meacham Contracting Co.*, 143 Ky. 557, 136 S. W. 1028 (1911); *McGraw v. Whitson*, 69 Ia. 348, 28 N. W. 632 (1886).

<sup>9</sup> *Erie R. Co. v. Patterson*, 74 N. J. L. 738, 68 Atl. 76 (1907).

<sup>10</sup> E. McQuillin, *The Law of Municipal Corporations* (Chicago, Callaghan and Company, 1928), Vol. II, p. 401, par. 802.

(6) **Effect of Extra-Legal Forces.** As with other deliberative assemblies, the functioning of councils often involves extra-legal processes which materially affect formal procedures. Caucuses of party members or of councilmen with common interests frequently are held for the purpose of reaching understandings in advance of formal consideration in council meeting. Personal and private conferences between councilmen and the representatives of local pressure groups may have far-reaching effects. In boss-ridden communities, councilmen are more likely to represent the local boss than their constituents and to do as they are instructed rather than to exercise independent judgment. Bosses, ward leaders, lesser politicians, and party leaders of one description or another usually exert a substantial influence over the action of councils.

Under the strong mayor-council plan, the mayor may dominate the scene by reason of his political strength, his popular appeal, the threat of veto, and the judicious distribution of patronage. Even weak mayors sometimes are able to manipulate councils with marked success, and very often the heads of administrative departments, especially if popularly elected, succeed in gaining the loyal support of individual councilmen or groups of councilmen for measures in which they have a special interest.

If the controlling influence over council deliberations is not exercised by a political boss or strong mayor, it is altogether likely that effective leadership rests in the hands of a few experienced and politically potent councilmen who know the legislative ropes and manage affairs to their own satisfaction. Whatever the formal organization and procedure, an understanding of the realities concerning the functioning of councils requires knowledge of what takes place behind the scenes.

**Merits and Defects of Mayor-Council Government.** Discussion of the advantages and disadvantages of different types of government is a matter of more than academic significance. Highly practical issues are at stake. At the same time, the type of organization is merely one of the various factors which determine the nature and quality of government in action.

In appraising the mayor-council plan of government, separate consideration of the strong and weak mayor varieties is essential. The latter is the least desirable of the prevailing patterns of city government in the United States, whereas the former is rated second to the council-manager plan by most persons who speak with authority on the question of the relative merits of different types of organization.

The weak mayor-council form has few, if any, merits. Persons who favor it usually stress its value as a means of preventing one agency of government, particularly the executive, from becoming so powerful as to undermine the foundations of local democracy and open the door to capricious and arbitrary government.<sup>11</sup> A separation of powers accompanied by numerous checks

<sup>11</sup> This argument loses much of its force when advanced in the field of city government because of the limited powers of municipal corporations and their subjection to numerous external controls which serve as safeguards against arbitrary action.

and balances is considered essential to the preservation of liberty and to security from abuses of power.

This type of organization also is hailed as a deterrent to dishonesty on the part of officials. Checks and balances enable men of integrity, some of whom normally manage to attain office, to upset the schemes of scoundrels who may have found their way into the city hall. Even if the ethical standards of all officials are low, division of authority among them adds to the hazards of grafting. One grafter may seek to benefit at the expense of others by exposing their activities.

Another line of argument is that the necessity for cooperation among officials who enjoy coordinate status increases the likelihood that governmental action will conform to the best interests and to the known wishes of the public. Agreement on the part of many officials is a prerequisite to action under the weak mayor plan. To the criticism that deadlocks may occur in the event of disagreement, the usual response is that inaction is preferable to unwise or undesired action.

The defects of the weak mayor system are attributable to the extremes to which the principles of separation of powers and checks and balances are carried. Features which are supposed to safeguard the interests of the public often have a contrary effect. Effective democratic control is rendered difficult; the development of satisfactory political leadership is hindered; and the chances of attaining expert municipal administration are substantially decreased.

Control of the city government by the people is hampered by an organization which produces confusion among the voters concerning the location of responsibility for what the government does or fails to do. The division of power is so great under the weak mayor system that even intelligent and close observers are uncertain as to whom to blame when misgovernment occurs. It is equally difficult to determine which officials deserve credit for praiseworthy accomplishments. The electoral privilege loses much of its potential value under such circumstances. Casting a ballot, like shooting a gun, is rather futile unless the proper political target is selected.

Another aspect of the matter is that the weak mayor plan tends to promote political bossism which in turn is a menace to genuine democracy. Weak government begets support for the political boss because people who want action become disgusted with a situation under which no official has sufficient authority to do what needs to be done. After a fruitless search for officers with adequate powers, the disgusted citizen is very likely to look with approval on a political boss who can give orders and guarantee results.

Division of power and responsibility with respect to administration produces inefficient, ineffective, and uncoordinated action. Experience has demonstrated that satisfactory administrative results depend in large measure on unified control and vigorous administrative leadership. The weak mayor is unable to function effectively as general manager of the administrative branch because of his limited authority and inadequate tools of management. Too many administrative agencies are placed beyond his control.

The quality of administration also is lowered because the mayor-council system discourages the development of an expert personnel. Even the establishment of a formal merit system fails to save the situation because the elective mayor and other topflight officials are almost certain to be amateurs. Moreover, the constant turnover in high positions promotes mediocrity all along the line.

The general weakness of the mayor's position accounts for the unsatisfactory situation in the matter of political leadership. Although forceful leadership depends to some extent on various extra-legal considerations, the legal factor is far from unimportant. Adequate authority is one of the pillars on which effective and sustained political leadership rests.

Conflicts often occur between the mayor, council, and other agencies which share power and responsibility under the weak mayor system. Deadlocks develop and the machinery of municipal government bogs down. By and large, the weak mayor plan can be depended on to provide a mediocre quality of government. Of course, even a clumsy governmental machine may function reasonably well if controlled by a capable personnel supported by proper traditions of public service. Nevertheless, the best results remain unattainable with an unsound organization. In small communities with relatively simple governmental problems the weak mayor plan proves less of a handicap to good government than in the larger urban areas.

The strong mayor system is definitely superior to the weak mayor plan. It is free from some of the major defects of the latter. In the first place, provision is made for integrated administration under the leadership of the mayor who possesses sufficient power to function as a real rather than a nominal administrative head. Lines of administrative authority run downward from the mayor's office and the ultimate responsibility of high and low administrative officials and employees to the mayor is clearly established.

Secondly, the mayor, by reason of the strength of his legal position, is provided with ample opportunity to furnish a unified political leadership of a vigorous type, even to the extent of attaining dominance over the council. His election by the voters gives him the public support which sustained leadership normally requires.

Another virtue of the strong mayor arrangement is that the definite location of primary responsibility for administrative results in the mayor's office contributes to effective democratic control by simplifying the task of the voter on election day. He knows whom to spank if he is dissatisfied with the service which has been forthcoming.

Finally, the powerful type of elective mayor appeals to many people in this country. Interest in public affairs seems to be stimulated by spirited election contests for possession of an office of major significance; and public confidence in government is increased because of direct popular election of the incumbent.

The strong mayor plan has serious weaknesses. Responsibility for overall governmental results remains divided between the mayor and council. Deadlocks may develop, ill-feeling may be generated, and responsibility for

the shortcomings of city government may be shifted back and forth to the confusion of the voting public. As demonstrated often enough in practice, there is no insurance that the major organs of city government will work together smoothly and harmoniously.

Popular election of the mayor is an unsatisfactory method of selecting a chief executive. The qualifications which make for success in securing nomination and in winning an election are not necessarily associated with the requirements of a good executive. An amateur rather than professional administrator dominates the scene and the general situation is aggravated because of the comparatively brief careers of mayors and the accompanying high turnover in departmental headships and numerous other positions.

Another evil consequence of an elective chief executive is the tendency to encourage the mayor to make appointments and removals on a political basis in order to gain and retain the support of politicians and pressure groups at election time. Political considerations also enter into the exercise of such other powers as the mayor possesses. Popular election of a powerful mayor makes the political machine an almost inevitable feature of local political life. Generally speaking, the price paid for the potent political leadership which the strong mayor furnishes is the sacrifice of expert administration.

Another weakness is combination of the tasks of political leadership and administrative management in a single office. Usually one or the other of these major duties is neglected because mayors who can play both rôles simultaneously and satisfactorily are comparatively rare. The work-load is too heavy even for men of great energy, ability, and physical and mental strength.

Finally, the concentration of power and influence in the mayor's office results in an eclipse of the council which, at least in principle, is the primary organ through which self-government by the people is realized. Assuming that the traditional type of representative body has proved its value, there is ground for objection to a system of government which places an unusual degree of authority in the hands of one person.

The superiority of the strong mayor-council system to the weak mayor type and to commission government is widely recognized. Its inferiority to the council-manager plan still is questioned by many persons.

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## CHAPTER XIX

### COMMISSION GOVERNMENT

#### *Outline*

##### **The Commission**

- Election of Commissioners
- Terms of Office
- Qualifications for Service on Commissions
- Compensation of Commissioners
- Size of the Commission
- Powers and Duties of the Commission

##### **The Office of Mayor**

- Powers and Duties
- Methods of Selection
- Term of Office
- Compensation

##### **Number of Administrative Departments and Selection of Department Heads**

##### **The Initiative, the Referendum, and the Recall**

##### **Claimed Advantages and Disadvantages of Commission Government**

###### **Advantages:**

- (1) Simplicity
- (2) A Short Ballot
- (3) At Large Elections
- (4) Small Size of the Commission
- (5) Concentration of Authority
- (6) Definite Location of Responsibility
- (7) Close Relationship Between Policy Determination and Administration

###### **Disadvantages:**

- (1) Lack of a Chief Administrator
- (2) Inexpert Administration
- (3) Mixture of Politics and Administration
- (4) Unduly Rigid and Arbitrary Departmental Organization
- (5) Taxing and Spending Powers in Same Hands
- (6) Commission Too Small To Be Representative
- (7) No Provision for Political Leadership

##### **The Commission Plan in Operation**

COMMISSION government is featured by the concentration of major legislative, executive, and administrative functions in a single organ of

government. The same persons who are charged with the important responsibility of deciding basic questions of urban policy also are empowered to act collectively as an executive authority and individually as the heads of administrative departments. With occasional exceptions,<sup>1</sup> subordinate officials and employees are selected by and subject to control by the commissioners. As might be expected in view of the drafting of charters by the legislatures of different states and by various local charter commissions, the details of commission government are by no means the same in all cities. However, numerous variations in detail are possible without destroying the essential character of the commission plan.

### THE COMMISSION

**Election of Commissioners.** In all cities operating under the commission plan the members of the commission are chosen by popular vote. Although three of the five members of the original Galveston commission were appointed by the state governor, popular election of the entire commission has become the universal practice and may be considered a fundamental feature of the plan. With respect to methods of election, however, diverse arrangements have been made.

Practically all charters provide for the election of commissioners from the city at large. A few cities have arranged for selection by wards or districts and several have resorted to the compromise plan of combining at large election with the device of nomination by wards. The prevalence of the system of nomination and election at large may be attributed to the fact that the standard arguments in favor of city-wide selection of councilmen gain in forcefulness when advanced in connection with the commission plan.

For reasons stated elsewhere,<sup>2</sup> better men are more likely to be chosen by election at large than on a ward basis. Inasmuch as the duties of the commission include administrative direction and control as well as policy determination, the need for securing the services of capable men is even greater than under other forms of city government. Unfortunately, election at large fails to solve the problem of selecting competent commissioners. It is an aid rather than a solution.

At-large election permits effective control of the *entire* commission by *all* voters of a city and increases the likelihood that commissioners will utilize their extensive powers to promote the general welfare of the urban community. Experience with the ward plan under various forms of government has demonstrated rather conclusively that city-wide interests suffer seriously from the preoccupation of ward councilmen with sectional politics. The consequences of devotion to ward political considerations prove especially unfortunate under the commission plan which requires each commissioner

<sup>1</sup> In some cities certain officers are chosen by popular vote. The officials most likely to be elected are one or more of the following: controller, auditor, treasurer, assessor, tax collector, city clerk, and city attorney. Boards of education and various judicial officers usually are chosen by popular vote.

<sup>2</sup> *Supra*, pp. 224-225.



not only to participate in the determination of policy, but also to act as the head of an administrative department. At-large election promotes the impartial administration of city services throughout all of the sections of a city.

The plan of combining at-large election with nomination by wards preserves the responsibility of all members of the commission to the entire municipal electorate, without sacrificing the principle of sectional or geographical representation. However, if residence in the ward be required of nominees, this arrangement is just as undesirable as the typical ward election plan in restricting competition for service on the governing commission. Moreover, commissioners, realizing that nomination by ward is a prerequisite to subsequent reelection, are quite likely to become rather ward-conscious. There is no creditable evidence that such a scheme is superior to the plan of having city-wide nominations and elections.

In approximately three-fourths of the cities operating under the commission form, provision has been made for non-partisan elections. The absence of party designations on the ballot not only is supposed to encourage voting in disregard of national and state issues, but also is intended to emphasize the view that city government by a commission is essentially a business proposition. It is hoped that commissioners will be elected on the basis of merit in relation to the functions to be performed rather than in consideration of national party affiliations. The extent to which elections are genuinely non-partisan varies from city to city and from time to time in particular cities.

Provision for non-partisan elections necessarily affects the method of nominating candidates. A widely used mode of nomination in commission governed cities is the non-partisan primary. The primary election results in the elimination of all competitors except a number equal to twice the number of commissioners to be chosen at the regular election. The survivors are those polling the most votes. Some charters provide that candidates receiving a majority vote in the primary election are forthwith elected to the commission. If no provision be made for a non-partisan primary, candidates in cities having non-partisan elections are nominated either by petition or by a simple declaration of candidacy. Commission-governed cities which permit party designations on the ballot usually arrange for the nomination of candidates by the partisan direct primary.

Generally speaking, the method of election in commission cities is the single choice-plurality system. However, some cities require a majority vote and achieve this objective by holding a second election, if necessary, or by resorting to some method of majority preferential voting, e.g., the Bucklin system.<sup>3</sup> So far, no city has provided for the election of commissioners by proportional representation. In view of the executive and administrative functions of commissioners, the appropriateness of using this method is open to question.

<sup>3</sup> The Bucklin system has been used at one time or another in about forty cities operating under the commission plan. For a list of these cities during the period when the preferential voting movement showed greatest strength see "Progress of Preferential Voting", *National Municipal Review*, Vol. VI, No. 1, January, 1917, p. 107.

**Terms of Office.** Terms of office of commissioners are two, three, or four years in practically all cities. Of the 308 commission plan cities with a population greater than 5,000, 61.9% report a four-year term, 24.4% a two-year term, and 10.4% a term of three years. The remainder, 3.2%, have either a five or a six-year-term.<sup>4</sup> In all probability the decided preference for a fairly long term may be attributable to the belief that long periods of service will result in better administration and that commissioners, being charged with the dual responsibility of policy determination and administration, should be given a real opportunity to demonstrate their worth.

Approximately three out of five cities provide that the terms of all commissioners shall begin and expire at the same time. The remainder have arranged for staggered terms of service. For example, if the commission consists of three members chosen for three years, one commissioner may be elected each year; or if the commission is composed of five and the term is four years, three members may be selected at one election and the others two years later.

The device of staggered or overlapping terms is supposed to promote greater continuity of policy by preventing a complete turnover of the personnel of the commission at a single election, thus insuring the presence of one or more experienced commissioners at all times. It also shortens the ballot at elections and thereby enables the voters to select commissioners more carefully.

The objections to the overlapping term are that elections occur more often and that the municipal electorate is prevented from holding the entire commission to account at one time for the manner in which city business has been conducted. Although the principle of individual responsibility is preserved, the principle of collective responsibility is impaired.

Whether the merits and defects of overlapping terms gain or lose in significance when considered in relation to commission government, rather than with respect to other forms, is a debatable question. There is no conclusive evidence that the staggered arrangement has produced either better or worse results than the plan of having the terms of all commissioners expire at the same time.

A large number of cities have provided for the popular recall of commissioners before the expiration of their legal term of office. Although the recall as an instrument of popular control may be associated with any form of city government, it is said to be particularly desirable in commission-governed cities because of the extensive powers vested in the commission. Many of the cities providing a long term for commissioners have placed this means of exercising continuous control at the disposal of the voters.

**Qualifications for Service on Commissions.** The qualifications required by law for service on the commission are essentially the same in character as those prescribed for membership in councils under other forms

<sup>4</sup> *The Municipal Year Book, 1948* (Chicago, The International City Managers Association, 1948), p. 46, Table 7.

of city government. Some cities provide that any qualified voter is eligible. The effect of such provision in terms of specific qualifications is to require United States citizenship, the age of 21 or over (18 in Georgia), a period of residence in the state, the county, and the ward or precinct, and, sometimes, depending upon the state in which the city is located, the passage of a literacy test, payment of taxes, or ownership of property.

Cities with somewhat stiffer qualifications than are required for voting usually specify a higher age and a longer period of residence within the city, e.g., 25 years of age and five years' residence. A few cities add ownership of property and payment of taxes. In commission-governed cities, as in those operating under other forms of government, it also is fairly common practice to prohibit the holding of more than one office and to disqualify persons having a financial interest in city contracts.

The foregoing summary of qualifications shows that laymen are deemed competent to serve on the commission. None of the usual requirements is indicative of executive ability or knowledge, skill, and experience in the field of municipal administration. In so far as commissioners decide broad questions of policy, qualifications which permit laymen to represent the general public undoubtedly are desirable. However, commissioners also perform important executive and administrative functions which ought to be entrusted to persons who possess special qualifications which the average layman is not likely to possess.

The establishment of legal qualifications in consideration of the executive-administrative role of commissioners happens to be impracticable as well as inconsistent with traditional principles of popular representation. That being the case, prevailing practice in the matter of qualifications seems justifiable. The problem to which attention has been directed reveals a defect in the commission plan which appears to be most serious in those cities which expect commissioners to render full-time and active service as department heads.

**Compensation of Commissioners.** The compensation of members of city commissions is affected by the size of the city, the character and volume of business to be transacted, and the amount of time which commissioners are expected to devote to their duties. Other determining factors are the attitude of those who fix the compensation with respect to the proper levels of pay for public servants in general, public opinion, the resources of a city, and prevalent economic conditions. The relative importance of these factors is difficult to determine. Generally speaking, commissioners are better paid than members of councils under other forms of city government.

For over 300 commission-governed cities with a population exceeding 5,000 the compensation per annum ranges from none to a maximum of \$7,500. One-fourth of these cities pay \$600 or less, and three-fourths \$3,000 or less. The median is \$1200. For the eight largest cities operating under the commission plan, within the population limits of 250,000 to 500,000, the minimum compensation is \$4,500, the maximum, \$7,500, and the median,

\$6,000.<sup>5</sup> As a general rule, the mayor-commissioner receives a somewhat higher compensation than the other members of the commission.

Practice varies in regard to the authority by whom the pay of commissioners is determined. Ordinarily, the charter-making body, i.e., the state legislature or the local charter commission, specifies a definite compensation or establishes limits within which the amount of pay may be fixed by the commission or by the voters. Sometimes, the commission is empowered to determine the compensation of its members, and in other instances the voters are authorized to raise the pay of commissioners above the maximum limit set by charter provision.

Compensation usually is provided in the form of an annual salary, but in some cities commissioners merely receive a specified payment per meeting attended. The latter plan almost always involves the establishment of a maximum total which may not be exceeded. This device is obviously designed to prevent frequent meetings for the sole purpose of increasing the income of commissioners.

**Size of the Commission.** The number of commissioners, including the mayor, ranges from three to seven for the 308 commission-governed cities with a population over 5,000. Of these cities, approximately 50% have a commission of five members, about 40% three members, and the remainder four, six, or seven. The proportion of cities having a commission of five or more is greater for the larger than the smaller cities.

There are several reasons for the creation of small-sized commissions. In the first place, the granting of executive and administrative as well as legislative powers to the commission makes it particularly desirable that this body be able to operate efficiently and effectively in the transaction of business. General experience has demonstrated that large groups function less satisfactorily than small ones unless rules of procedure are so devised as to restrict rather drastically the privileges of individual members. Such restrictions involve a sacrifice of the free exchange of opinion among equals. A small commission permits freedom of discussion in an informal way without undue delay in reaching decisions. This freedom is especially necessary in view of the large volume of executive and administrative business which commissions are expected to handle. Secondly, the members of a small body are in a better position to know one another well, and mutual understanding seems highly desirable among officers who are equally responsible for control of city affairs. Thirdly, the greater prestige attached to service on a small body may attract men of greater ability. In the fourth place, the fewer the number of commissioners, the shorter the ballot and the better the chance that the electorate will vote more wisely in choosing commissioners. Finally, the voters will find it easier to keep track of the activities of a small number of men and consequently will be in a better position to act fairly in holding commissioners to account for their conduct in office.

The primary arguments against a small commission are two in number.

<sup>5</sup> *Ibid.*, p. 48, Table 2.

It is often contended that commissions of three, five, or seven members are too small to be adequately representative of different points of view and various groups of voters. Attention also is directed to the fact that the maximum number of administrative departments is fixed by the size of the commission and that too limited a number of departments frequently results in an improper organization of administrative services. These objections to the small commission will be discussed in subsequent paragraphs.<sup>6</sup>

**Powers and Duties of the Commission.** Full responsibility for the conduct of city government normally rests upon the commission, which is granted broad authority to decide questions of policy, raise revenue, appropriate money, and direct and control administration. Legislative, executive, and administrative functions are assigned to the commission as the dominant organ of city government. Generally speaking, every city official and employee is subject to effective control by the commission. Concentration of authority in combination with a fusion of functions is the controlling principle of organization.

The following selections from the original Galveston charter are typical of provisions concerning the general position of the commission in the scheme of city government:

Sec. 17. The board of commissioners of such city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the Constitution and laws of this State, touching every object, matter and subject within the local government instituted by this act.

Sec. 34. The board of commissioners shall have power to appropriate money to provide for the expenses of said city.

Sec. 54. The board of commissioners shall have power . . . to levy for general purposes an annual ad valorem tax on all real, personal and mixed property within the territorial limits of said city . . . and shall also have the power to annually levy and collect a poll tax . . . .

Sec. 8. . . . The said commissioners shall by a majority vote of all the commissioners . . . have the power to appoint all officers and subordinates in all of the departments of said city, and to suspend and to discharge the same for cause, at will, under the limitations hereinafter provided.

Sec. 12. Said board of commissioners . . . shall have control and supervision over all departments of such city and to that end shall have power to make all such rules and regulations as they may see fit and proper, concerning the organization, management and operation of such departments; and shall have power, under such rules and regulations as they shall make, to appoint, and, for cause which to said board shall seem sufficient, and after an opportunity to be heard, to discharge all employees, including the chiefs of the departments respectively. Said commissioners shall have sole authority to pass and adopt such rules and regulations concerning all of the departments of such city and the other agencies created by them for the administration of its affairs.

Sec. 21. Said board of commissioners shall have power from time to time to require further and other duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers elected to any office under this act, whose duties are not specially mentioned, and to fix their compensation when not herein fixed.

<sup>6</sup> *Infra*, pp. 384-385.

The charter also authorized the commission to borrow money under certain limitations and to designate from among its membership one Police and Fire Commissioner, one Commissioner of Streets and of Public Improvements, one Waterworks and Sewerage Commissioner, and one Commissioner of Finance and Revenue.

The foregoing extracts indicate that the commission was intended to function collectively both as a local legislature and as an administrative or executive board and that each commissioner (except the mayor) was to exercise general supervision over an administrative department. Provisions to the same general effect, although varying in wording and detail, are characteristic of charters establishing commission government in other cities. The chief variations will be dealt with in subsequent paragraphs discussing the office of mayor, the rôle of commissioners as department heads, and the actual operation of commission government.

The business to be transacted by the commission is disposed of at regular or special meetings which are usually open to the public and are held as often as necessary in consideration of the amount of work to be done. Charters often provide that regular meetings shall be held at least once a week, every other week, or at some other specified interval of time. Various officials attend the meetings. The presence of some is required by charter provisions; others appear in order to aid the commission in the performance of its duties by providing needed information.

As might be expected, in view of the small size of the commission, meetings are characterized by an atmosphere of informality. The commissioners usually are seated around a table with the mayor presiding, and business is disposed of as a rule with relatively little delay. It seems to be fairly common practice for commissioners to reach an understanding concerning scheduled action by resorting to the device of conferences and discussion in advance of official meetings. Among the matters which are likely to be dealt with by the commission are the passage of ordinances, the making of appointments, the ordering of public improvements, the letting of contracts, and the reference of various questions to appropriate officials for investigation and report. At some time during the meeting citizens may be given the opportunity to present such matters as they might wish to call to the attention of the commission.

#### THE OFFICE OF MAYOR

The commission plan provides for an officer usually entitled Mayor but sometimes known as President or Chairman. More important than the title are the powers and duties assigned to this official. The office of mayor under the commission form differs in many significant respects from the mayor's post under the mayor-council system of government. Consideration will be given first to the normal position of the mayor-commissioner; thereafter attention will be directed to exceptional cases.

**Powers and Duties.** Legally speaking, the rôle of the mayor is about the same as that of other commissioners. As a member of the commission,

he enjoys the same privileges as any other member in regard to the introduction of ordinances and resolutions, participation in discussion, and voting. Ordinarily, too, he acts as the head of an administrative department under the general control of the commission.<sup>7</sup>

The mayor's position differs from that of the other commissioners in that he is: (1) titular head of the city, (2) the presiding officer of the commission, and (3) the possessor of certain special powers of minor significance. As official head of the city he represents it on ceremonial occasions, frequently acts as an agency of communication with other units of government and private persons, and performs various routine acts, such as signing ordinances, contracts, warrants on the treasury, and other official documents. In his capacity as presiding officer of the commission, the mayor exercises the usual powers of the chairman of a meeting. His special powers include little more than the power to call special meetings of the commission, to prepare an annual report covering the activities of the city government, to exercise the powers of a sheriff in times of emergency, to serve as an *ex officio* member of a few boards or commissions, and to exercise general supervision over administration.

The last mentioned of the foregoing powers sounds more significant than it actually is. No mayor can supervise effectively without powers of compulsory control and without having appropriate tools of management placed at his disposal. The mayor-commissioner's position is especially weak in these respects. He seldom is able to exert much influence over departments headed by commissioners who have been placed in office by popular vote and who are legally responsible only to the entire commission. Of course, there are instances in which the mayor becomes an extremely influential official, but the explanation of this situation lies in such factors as personality, political strength, and the attitude of the public rather than in the nature and extent of the mayor's legal authority. An outstanding example was provided by Mayor Hague, long time mayor of Jersey City, N. J. From the standpoint of law, the normal mayor under the commission plan is little more than a figurehead.

Some charters providing for commission government have included provisions conferring on the mayor powers in addition to those mentioned in the preceding paragraphs. The result is a structural arrangement in the nature of a compromise between the commission and the mayor-council plans. Among the extra powers of the mayor may be found some or all of the following: power to appoint and remove various officials; authority to designate the departments to be headed by the other commissioners; the right to prepare the budget; the veto power; and the power to veto or disapprove of items in appropriation ordinances.

A mayor equipped with these powers is in a better position to influence the course of city government than the normal mayor-commissioner. Among cities which have or have had charters providing for this type of mayor are

<sup>7</sup> Sometimes the mayor is merely charged with the general oversight of city business without being assigned to a particular department.

Lewiston, Idaho; Cedar Rapids, Iowa; New Orleans, Louisiana; Tulsa, Oklahoma; and San Antonio and Denison, Texas.

**Methods of Selection.** There are several methods of selecting the mayor. The two most widely used are direct popular election and selection by the commission from its own membership.<sup>8</sup> Under the former method, the voters choose one of a group of candidates competing for the office of mayor. Under the latter, the voters merely elect the commissioners, and the newly-elected commission, usually at its first meeting, designates one of its members to act as mayor. In a few cities (1.3%), the charter provides that the candidate polling the highest vote at the popular election of commissioners becomes the mayor. Occasionally, in connection with a staggered term arrangement under which one commissioner retires from office each year, the commissioner serving his last year in office acts as mayor for that year.

**Term of Office.** The term of office of the mayor is affected by the method of selection and by the provisions concerning the term of service of commissioners. If the mayor be chosen by popular vote, his term is usually the same as that of other members of the commission, but there are a few charters which provide a longer and a few which stipulate a shorter term for the mayor.

In those cities in which the mayor is chosen by the commission from its own membership, the mayor's term is either the same as that of the commission or shorter. The shorter term is provided if the terms of the commissioners are staggered. In that event the commission chooses a mayor after each election at which commissioners have been chosen by the voters. Thus, if a commission of five be elected for a four-year term, two commissioners being chosen at one election and three two years later, the term of office of the mayor is two years. However, a commissioner who is designated to act as mayor for two years, but fails to be chosen as mayor a second time, continues to serve on the commission for the remainder of his four-year term as a commissioner. In those cases in which the commissioner polling the largest vote becomes the mayor, the term of service coincides with that of the commissioners, but if the arrangement be that each commissioner is to act as mayor during his last year in office, the term is necessarily shorter.

**Compensation.** The compensation of the mayor is ordinarily somewhat greater than that provided for the other members of the commission, but sometimes it is the same. Occasionally the mayor receives considerably more than the commissioners. The common practice of providing higher pay for the mayor is attributable to the additional prestige attached to his office and to the greater time which may be required for the discharge of his responsibilities.

<sup>8</sup> The mayor is chosen by popular vote in 83.7% of the cities with a population of 5,000 or over and by the commission in 15% of these cities, *Ibid.*, p. 42, Table 2.



NUMBER OF ADMINISTRATIVE DEPARTMENTS AND SELECTION OF  
DEPARTMENT HEADS

The number of administrative departments<sup>o</sup> is determined by the size of the commission. Usually, there are as many departments as commissioners, but sometimes the number is reduced by one. This latter arrangement is designed to relieve the mayor of the responsibility of acting as a department head in order that he may be free to devote all of his time to the general oversight of city business.

As a rule, the general character of the departments is determined by charter provision. For example, the Pennsylvania third class city law provides for the following departments: Public Affairs; Accounts and Finance; Public Safety; Streets and Public Improvements; Parks and Public Property. The nature of the functions of a given department is often indicated in a rough way by its title, but this guide to departmental activities is unreliable. Thus the activities assigned to a Department of Public Affairs in one municipality may be quite different from those placed in a department bearing the same indefinite title in some other city.

In so far as the functions of the departments are not fixed by the charter of a city, the commission is free to assign and reassign activities from time to time. Consequently, even in a given city, a careful study of both charter and ordinances is necessary in order to be certain of the services rendered by a particular department from year to year. Peculiar combinations of activities are likely to be found within the departments of commission-governed cities because of the typically small commission and the relation between the size of the commission and the number of departments. A limited number of departments in cities rendering quite a variety of services necessarily results in the grouping of activities which are unrelated from the standpoint of either purpose or the character of the operations involved.

Various methods are used to determine which department each commissioner shall head. The most common plan is to authorize the commission to make the assignment. This action usually is taken at the first meeting of a newly-elected commission. Whether subsequent reassignments may be made depends upon the provisions of the charter.

Another frequently used method is direct popular election to the headship of a particular department. Under this plan the voters choose among the candidates competing for service on the commission as head of a designated department. The competition for each departmental position is separate and restricted to the group of candidates nominated for each particular post.

A third method is to authorize the mayor to assign commissioners to departments. Relatively few cities use this plan which is designed to strengthen the position of the mayor.

A fairly common restriction upon the authority by whom departmental assignments are made, whether by the commission, the voters, or the mayor, takes the form of a charter provision to the effect that the mayor

<sup>o</sup> The term "department" is used to designate the largest administrative unit involving a combination of activities.

shall head a designated department, usually the Department of Public Affairs. The reason for this arrangement is to associate the mayor, who is ordinarily charged with the general oversight of city business, with the administrative department which supposedly is concerned with activities of a general rather than specialized character.

Although the functions of departments of public affairs vary greatly among commission plan cities, the offices of the corporation counsel, the city clerk, and the civil service commission are likely to be included along with other activities which must be placed somewhere, but lack a definite relationship to the functions of other departments.

In some cities, another limitation upon the assignment of commissioners to departments is the provision that the mayor shall head no department. He is relieved of the responsibility of heading a department so that he may devote all of his time to the task of general supervision.

The duties of a commissioner as head of a department may be either active and managerial or passive and supervisory. In some cities commissioners are required to render full-time service and perform the usual functions of an executive in charge of a specific department, namely, direction, control, and supervision. In other cities the commissioners are supposed to do no more than exercise a general supervision over their departments in behalf of the commission. Active management is left to the superintendents in charge of the several bureaus into which each department is divided or to an administrative official in actual control of the department under the supervision of the commissioner who is the nominal head.

Whether commissioners function as managers or supervisors is a question that can be answered satisfactorily only after investigation of the practice in a particular city. Local circumstances, as determined by such variable factors as personality, political pressures, salaries, and the attitude of the people, are controlling in this matter. Experience indicates that the natural inclination of commissioners is to play as active a part in the affairs of their departments as circumstances permit.

#### THE INITIATIVE, THE REFERENDUM, AND THE RECALL

The initiative, the referendum, and the recall are instruments of direct popular control in the governmental field which may be associated with any form of municipal government. They are by no means a necessary feature of the commission plan.

Any impression to the contrary ordinarily is due to two reasons. One is the fact that many charters providing for commission government have established these devices. The same observation may be made of charters prescribing the council-manager form. In both cases the explanation is the simultaneous development of reform movements designed to effect improvements in organization and to increase control of the voters over public business. Dissatisfaction with the misgovernment of cities by irresponsible politicians resulted in a demand for various reforms which were often incor-

porated in new charters by those anxious to elevate the standards of urban government.

Another reason for association of the initiative, the referendum, and the recall with commission government was the contention of various early sponsors of the plan that concentration of authority in the commission ought to be accompanied by effective popular checks as a safeguard against possible misuse of power. It was argued that the discarding of an organization based upon the principles of separation of powers and checks and balances would involve little or no risk provided the voters possessed means of direct action whenever the need might arise. However desirable these means may be, they certainly are unnecessary to the existence of commission government.

#### CLAIMED ADVANTAGES AND DISADVANTAGES OF COMMISSION GOVERNMENT

The advantages and disadvantages of the commission plan as a form of governmental organization should not be confused with the results, whether good or bad, actually attained in operation in the many cities which have experimented with this type of structure. Organization is but one of many factors bearing upon the standards of governmental performance.

Good organization affords an opportunity to achieve desired results with less effort, less friction, and less difficulty in general than would otherwise be the case. It also may promote the development of other conditions favorable to the attainment of good government. Thorough investigation is necessary in order to ascertain the real relationship between a certain type of organization and the service standards actually maintained thereunder in a given city.

**Advantages: (1) Simplicity.** Simplicity in organization is a feature of the commission plan which is deemed advantageous from the standpoint of both officials and the public. The voters elect the commission and the commission determines and administers policies, controls city finances, and hires and fires other officials and employees.

In short, a single body of small size is placed in charge of all phases of public business. A direct relationship between the government and the people is established. As compared to the mayor-council plan, especially the weak mayor type, there are no complicated arrangements which may cause confusion concerning the location of powers and responsibilities. Such a plan is easily understood. Consequently, voters and officers should be able to operate it with little difficulty.

**(2) A Short Ballot.** A short ballot is another merit of the plan. The only officials necessarily chosen by popular vote are the members of the commission, few in number. Voters are better able to perform their electoral responsibilities when attention can be concentrated upon the candidates competing for a limited number of positions. Greater interest is likely to be manifested in an election confined to the choice of a few officials enjoying

great prestige by reason of their extensive authority. A better chance to select able men is provided.

It is difficult to say whether this advantage has borne fruit in practice. Limiting the number of elective officers is obviously merely one of many factors bearing upon the electoral result. Moreover, reliable criteria for determining whether voters have acted wisely or foolishly are lacking. Then, too, in some cities, the holding of national, state, and municipal elections on the same day has prevented realization of the potential effects of a short city ballot.

(3) **At-Large Elections.** Election of commissioners at large eliminates ward politics, provides a better opportunity for the choice of able men, and increases the chances that each commissioner will endeavor to promote city-wide interests and not merely those of particular geographical sections. It also enables the *entire* electorate to express satisfaction or dissatisfaction with the performance of each commissioner and preserves the unity of popular control. Obviously, these advantages are foregone by the few cities which have departed from the principles of commission government to the extent of providing for the election of commissioners by wards or districts.

(4) **Small Size of the Commission.** The small size of the commission permits the transaction of business in an expeditious and efficient manner without curtailing the privileges of individual members to the extent necessary in the case of larger and more unwieldy bodies. Moreover, the members of the commission, being few in number, are more likely to become better acquainted and better informed concerning one another's abilities. Mutual understanding tends to promote a more cooperative spirit. There is also the consideration that small bodies with extensive authority seem to attract the services of a better class of citizens.

(5) **Concentration of Authority.** All lines of authority converge in the commission which is in a position to make its will effective and to compel cooperation on the part of lesser officials and employees. If the relations between the commission and other branches of the city government prove unsatisfactory, the situation is due to factors other than want of authority.

Full authority to exercise such powers as have been delegated to the municipal corporation enables the commission to formulate and execute a unified program of activities. Failure to do so cannot be attributed to the separation of powers among various independent agencies of government. If capable men be chosen to serve on the commission, concentration of authority increases the efficiency of governmental operations.

(6) **Definite Location of Responsibility.** Authority and responsibility go hand in hand. Definite location of responsibility in the commission undoubtedly is a merit of the plan. If municipal affairs be mismanaged,

the commission deserves the blame, but if the standards of achievement be high, it is entitled to the credit.

Shifting of responsibility to other agencies of government is out of the question in view of the dominant position of the commission. Consequently, the voters know what to do when dissatisfied with the government of their city. Fair and effective action can be taken by the electorate at election time without confusion and uncertainty concerning the degree of responsibility of the commission as a whole.

**(7) Close Relationship Between Policy Determination and Administration.** The determination and the administration of policy are brought into close relationship under the commission plan because of the concentration of authority in the commission and the rôle of commissioners as department heads. Each department is represented at all times in the deliberations of the commission. Proper cooperation between administrators and law-makers in solving the problems of city government is thus promoted. Although conflict, friction, and political rivalry may develop, the separation of powers among mutually independent branches of government is eliminated as a cause. If there be lack of teamwork, the situation is due to other reasons which will be discussed in the paragraphs that follow.

**Disadvantages: (1) Lack of a Chief Administrator.** The commission plan fails to provide for a single administrative head with adequate powers of management in relation to the various administrative departments. Each commissioner, as head of a department, is directly responsible to the commission, but the commission is a poor substitute for a single chief administrator. A group of men ordinarily is unable to act as vigorously and as effectively as a single individual in directing, controlling, and supervising the activities of an administrative organization. Moreover, when the members of this group act as the heads of the departments which are to be subjected to a unifying control, the prospects for adequate over-all management are indeed slim.

The development and execution of a well-balanced program of service for the city as a whole is likely to be neglected by commissioners who become preoccupied with their own departmental affairs and engage in competition with one another to strengthen their departments and attract the attention of the general public. Each commissioner, jealously guarding the right to boss the department to which he has been assigned, hesitates to disapprove of the proposals of other commissioners in regard to the activities placed under their control. As a result, commissioners are inclined to pursue a "live and let live" policy under which each remains free to manage his department as he pleases. This practice produces as many "little" administrative heads as there are commissioners. If however, a majority decide to stick together, the minority commissioners are subjected to an unwelcome supervision by the majority and only the members of the majority are able to run their departments on the "live and let live" basis.

Lack of a chief administrator means division of responsibility for administrative results, difficulty in securing coordination of the activities of all departments, and absence of effective leadership in administration. The loyalty of subordinate officers and employees is divided and morale is likely to be lower than would otherwise be the case. Moreover, without an administrative head, the potential benefits of sound budgeting, various financial controls, centralized purchasing, systematic planning, and an effective personnel policy can be realized only with difficulty, if at all. Disintegrated administration is a serious weakness of the commission plan.

(2) **Inexpert Administration.** Popular election of the commissioners who act as heads of administrative departments usually results in the choice of men who lack the qualities that an administrator ought to possess. The voters are seldom in a position to determine the respective abilities of candidates as planners, organizers, leaders of men, and specialists in particular fields of administration. Even if they were, candidates for elective offices are ordinarily nominated because of their vote-getting ability rather than in consideration of their competence as executives. Then, too, a commissioner is required to act as a representative as well as an administrator, and the voters probably feel that the former rôle should be given primary consideration in choosing among candidates. Few men and fewer nominees are capable of being both good executives and good representatives.

Whatever the method of assigning commissioners to departmental posts, whether by the commission, by direct popular election or by the mayor, the chances are slight that each commissioner will be qualified in all respects to act as head of the particular department to which he is assigned. Furthermore, since commissioners are elected for definite terms, changes in the headship of departments occur frequently unless commissioners are re-elected and re-assigned to the same departments. However desirable a changing personnel may be in discharging the function of policy determination, experience has demonstrated that permanency of tenure is advantageous in the administrative field.

The consequences of the foregoing defects in the arrangements for selecting department heads under the commission plan depend upon several factors which may vary from city to city or from time to time in a particular city. If commissioners play a passive rôle as department heads, if active management of departmental affairs is placed in the hands of permanent officials, and if subordinate officers and employees are selected and retained on a merit basis, the fact that the commissioners are likely to be poorly qualified as administrators loses much of its significance. However, the shortcomings of commissioners as department heads prove serious in those cities in which each commissioner functions as the active manager of a departmental personnel which has been recruited without special emphasis upon competence. Unfortunately, the latter situation, rather than the former, prevails in many commission-governed cities.

(3) **Mixture of Politics and Administration.** The commission plan, instead of discouraging the mixture of politics and administration, invites resort to administrative practices which prove politically expedient. Few commissioners are able to withstand the temptation to use their departmental authority in order to gain political support, to fulfill campaign promises, and, in general, to strengthen their chances of re-election. The political pressures to which commissioners are subjected determine the extent to which the playing of politics influences administration. Elected officials are peculiarly sensitive to these pressures, and that is why the commission plan, which vests important administrative powers in elective commissioners, deserves an unfavorable rating from the standpoint of the probability that administrative standards will be sacrificed in the interests of politics.

(4) **Unduly Rigid and Arbitrary Departmental Organization.** Another defect of the commission plan is rigidity and arbitrariness in determination of the number of administrative departments. Since each commissioner, with the exception of the mayor in some cities, acts as a department head, the size of the commission is the controlling factor in fixing the number of departments. By reason of the small size of the commission, the consequence of this feature of the plan is the forced grouping of unrelated activities into administrative units in disregard of sound principles of organization.

A system of unifunctional departments is usually out of the question with commissions composed of five or fewer members. The necessity of assigning every service to some department, the total number having been determined arbitrarily,<sup>10</sup> often results in peculiar combinations of functions. Departments of public safety under the commission plan frequently include such functions as fire protection, police protection, and public health. Although these services may have the broad common purpose of promoting public safety, they are clearly unrelated from the standpoint of particular objectives and administrative processes. Nevertheless, the commissioner assigned to head such a department of safety ought to be equally well qualified and equally well interested in directing and controlling the performance of each of these major functions.

Even more incongruous groupings often are found in commission-governed cities. Examples are: location of the bureau of health in the department of finance, the assignment of street cleaning and fire protection to the same department, placement of the public library service within the police department, and the combination of finance and recreation.

The adverse effects of rigid and arbitrary departmental organization are undoubtedly more serious in the large cities. Small cities provide fewer services on a more limited scale and under such circumstances the grouping of unrelated activities proves less detrimental to administrative efficiency. A limited number of departments may be sufficient to meet the needs of such cities.

<sup>10</sup> An increase in the number of commissioners to overcome this defect would involve sacrifice of the claimed advantages of the small commission.

(5) **Taxing and Spending Powers in Same Hands.** The commission plan places the spending, appropriating, and tax-levying functions in the hands of the same persons. Extravagance and unwise allocation of public funds are likely to be promoted by an arrangement under which the officials who prepare the budget also legalize and execute it. Although initial preparation of the financial program is a proper task of the administrative branch, the authorization of expenditures and the raising of revenue should be the responsibility of a representative body which is not charged with the performance of the administrative function.

Under the commission plan, each commissioner estimates the financial needs of his department for the fiscal year, the commission as a whole prepares and then adopts the budget, and subsequently each commissioner controls the expenditure of money appropriated for his department. The recommendations of the commissioners as administrators are at no time subject to careful scrutiny and final approval by an independent organ of government.

(6) **Commission Too Small To Be Representative.** The commission is often criticized as being too small to be adequately representative of the general public, especially in the larger cities. This contention is based on the view that the larger the number of representatives the greater the opportunity for a variety of interest-groups to secure representation on the commission and the greater the likelihood that questions of policy will be given consideration from all angles.

Obviously, the proportion of voters to representatives decreases as the size of a representative body is increased, but whether various interest-groups will succeed in obtaining representation depends largely upon the methods of nomination and election which are used. Large bodies are no more likely to be representative than small ones if election at large is combined with the single choice-plurality system of voting, as is the case in most commission-governed cities.

Then, too, the force of this criticism of the commission plan depends upon which of several theories of representation is accepted as sound. Although large bodies contain more representatives than small ones, the crucial question is: ~~Whom do these representatives represent?~~ As for the claim that large groups are more likely to consider questions of policy from all angles, experience indicates that size is less important than the mode of procedure, facilities for obtaining information, and the caliber of the policy-determining personnel.

✓ (7) **No Provision for Political Leadership.** The commission plan fails to make formal provision for effective political leadership, i.e., leadership in the determination of policy. This type of leadership is supposed to be furnished by the commission, but a group of men who enjoy equal authority seldom proves able to provide as effective leadership as a single official vested with a sufficient degree of power to create the probability that his views will prevail. An example of such an officer is the mayor under the strong mayor-council plan.



Commissioners are handicapped not only by their limited authority as individuals, but also by the fact that leadership by one man appeals far more to the public than leadership by a group of men. The mayor-commissioner seems to be the logical spokesman for the commission. However, his powers are too insignificant to enable him to lead effectively unless he happens to command the support of the other commissioners and the general public by reason of his personality and skill in politics.

Without effective leadership the government of a city may be affected adversely in several ways. Programs of action may lack unity, the rendering of new services may be postponed unduly long after the need therefor has arisen, controversial issues may be sidestepped because of the unwillingness of any one commissioner to take the lead in overcoming opposition, and the task of arousing public interest in, and support for, the activities of the city government may be neglected. Lack of initiative is often characteristic of groups. The size of the city, the character of its population, local tradition, and political circumstance are among the factors which determine the extent of the need for effective political leadership. In many cities, particularly those of small size with relatively simple governmental needs and those in which there is little controversy concerning the proper functions of city government, this defect of the commission plan seems to be of minor significance.

#### THE COMMISSION PLAN IN OPERATION

Nearly 50 years have passed since the Galveston experiment was instituted. During that period the commission plan has been given a trial in a substantial number of cities, both large and small. Many have adhered to it, but the number of abandonments in favor of some other form of government, especially the council-manager plan, is fairly large. Comparatively few cities are now adopting it.

Although a thorough study of the operation of commission government in all cities which have tried the plan remains to be undertaken, available evidence indicates that its decline in popularity is due to demonstration of its defects and to the conviction that the strong mayor-council and council-manager plans are superior types of organization. However, commission government is still considered preferable to the weak mayor-council form.

Early reports concerning the results of commission government were mostly favorable and enthusiastic. The successes achieved in Galveston and Des Moines received great publicity. E. S. Bradford, writing in 1911 on the basis of an investigation undertaken to ascertain results, made the following statement:<sup>11</sup>

There has been a long enough period of trial to indicate the success of the plan in cities of less than 100,000, and to raise a strong presumption that the application of the same principles in larger cities will greatly improve present conditions.

He also asserted:<sup>12</sup>

<sup>11</sup> *Commission Government in American Cities* (New York, The Macmillan Co., 1911), p. 305.

<sup>12</sup> *Ibid.*, p. 306.

The widespread civic awakening coincident with the adoption of this improved form of municipal organization augurs well for the future. If this shall prove to be permanent, it will constitute the element which no mere form of government, however perfect, can be expected to supply—that active interest of citizens so necessary for the successful continuance of democratic institutions.

This last observation is as true today as it was in 1911. The reported initial successes of the commission plan in various cities were in large part the consequence of an aroused public interest. It also should be remembered that the achievements of commission government were being compared with the results previously attained under the weak mayor-council plan. All of the early converts had been operating under the latter form. The strong mayor system had made little headway at the time commission government was established in Galveston; and the council-manager plan originated seven years later. During the period of the extremely rapid spread of the commission form, the council-manager movement was just beginning to gain momentum. As compared to the quality of service rendered under the weak mayor system with its extreme division of power and responsibility, the optimistic reports concerning the accomplishments of commission government seem to have been justified.

The passage of time brought about a change of attitude. Once the interest of local citizens in municipal reform waned, as it did eventually in most commission cities, the quality of government appears to have declined. Reports from many cities indicated a decrease in the caliber of commissioners; the development of friction, rivalry, and bitter feeling within the commission; extravagance, lack of coordinated administration, and sacrifice of administrative standards on the altar of political expediency. It became apparent that these developments were due not only to loss of citizen interest, but also to inherent weaknesses of the commission plan, especially on the administrative side. At the same time most of the steadily growing number of local critics agreed that results remained better than under the weak mayor-council form for which commission government had been substituted.

The commission plan has produced good results in some cities over an extended period of time, but in the majority of cases its long-run record may be rated no higher than fair. It seems to be more suitable for small than for large cities. Since groups sponsoring reform in the governmental organization of cities, e.g., the National Municipal League, do not look with favor upon the plan, a revival of its former popularity seems improbable. Perhaps its chief contribution to municipal government in the United States has been to demonstrate that concentration of authority promotes rather than impedes effective popular control and to pave the way for a newer and better system of government, viz., the council-manager plan.

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**CHAPTER XX**  
**COUNCIL-MANAGER GOVERNMENT: STRUCTURAL**  
**FEATURES**

*Outline*

**Spread of the Council-Manager Plan**

**The Council**

Size of the Council

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**The Council-Manager Plan and the Initiative, the Referendum, and the Recall**

**Advantages and Disadvantages of the Council-Manager Plan**

**Conclusion**

THE COUNCIL-MANAGER form of government places full responsibility for the conduct of city business in the hands of a council chosen by the voters. At the same time provision is made for an appointive manager to take charge of the important function of administration and to advise the council in the formulation of policy. A unification of powers in combination with a division of functions is the key principle of the plan. The dominance of the council in administration as well as in policy determination is assured by its power to select and remove the manager.

Some charters leave prescription of the manager's powers and duties entirely to the council, but most of them specify certain powers which the manager is to possess apart from such authority as the council may see fit to delegate. Under either arrangement, the council, being authorized to dis-

miss the manager at pleasure, is in a position to exercise effective control over his actions. Instead of engaging in the actual work of administration, the council is supposed to deal with administrative matters only by ordinance or resolution and by issuing formal instructions to its agent, the manager. In theory, the council decides and the manager administers. The extent to which the theoretical relations between council and manager are observed in practice is a question which will be discussed in the following chapter.

#### SPREAD OF THE COUNCIL-MANAGER PLAN

Although the office of general manager had been created by ordinance in Staunton, Virginia, in 1908, Sumter, South Carolina, was the first city for which the manager plan was established by charter provision. The Sumter charter, which was adopted in 1912, became effective at the beginning of the following year.

By the end of 1913, nearly a dozen municipalities in the United States had followed the lead of Staunton, and thereafter the plan spread rather rapidly. The first large city to join the ranks was Dayton, Ohio, which began operation under the manager form in 1914. Table III shows the year by year record of *establishment* in municipalities located within the United States and still adhering to council-manager government.

TABLE III

MUNICIPALITIES IN THE UNITED STATES OPERATING UNDER THE  
COUNCIL-MANAGER PLAN, AS OF MARCH 1, 1948: CHRONOLOGICAL  
RECORD OF ESTABLISHMENT AND NUMBER OF STATES AMONG  
WHICH DISTRIBUTED.

<i>Year</i>	<i>Number of Muni- cipalities in which established</i>	<i>Accumulated total</i>	<i>Accumulated total of States</i>
1908 .....	1	1	1
1912 .....	2	3	2
1913 .....	7	10	7
1914 .....	19	29	17
1915 .....	19	48	19
1916 .....	14	62	20
1917 .....	15	77	23
1918 .....	19	96	24
1919 .....	24	120	25
1920 .....	32	152	26
1921 .....	45	197	29
1922 .....	27	224	31
1923 .....	29	253	31
1924 .....	10	263	31
1925 .....	21	284	33
1926 .....	20	304	33
1927 .....	20	324	33

TABLE III—Continued

Year	Number of Municipalities in which established	Accumulated total	Accumulated total of States
1928	14	338	33
1929	14	352	34
1930	16	368	34
1931	16	384	34
1932	20	404	35
1933	6	410	36
1934	6	416	36
1935	11	427	36
1936	11	438	36
1937	9	447	36
1938	14	461	37
1939	13	474	37
1940	16	490	37
1941	20	510	37
1942	24	534	39
1943	10	544	40
1944	25	569	40
1945	29	598	40
1946	48	646	41
1947	74	720	41
1948 (three months)	36	756	42

The figures presented in the table include only cities, villages, boroughs, towns, and townships located in the 48 states. Council-manager government also is established in 11 counties in the United States, 2 cities in Alaska, 1 city in Puerto Rico, 35 Canadian cities, and 4 cities in Ireland. The grand total of local units operating under the plan is 809 as of March 1, 1948. Figures in the tables are based on the date upon which the plan became effective as presented in Table XX, Directory of Approved Council-Manager Cities, And City Managers, *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), pp. 493-506. Discrepancies will be noted between these figures and those presented in the *Year Book* on page 229, Table 1.

From 1940 to 1947 inclusive, 288 municipalities adopted the council-manager plan. During the 1920's the number was 227 and during the 1930's it was 130.<sup>1</sup> The record number of adoptions<sup>2</sup> in a single year, 79, occurred in 1947. Early reports for 1948 indicate the breaking of this record. There is every reason to believe that the manager movement will continue to gain in strength. As shown in Table IV, only 31 cities in the United States have abandoned the plan by popular vote over a period of 40 years. The reasons for abandonment in these cases will be summarized in the next chapter.

<sup>1</sup> G. L. Geer, "Council Manager Government", *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), p. 228.

<sup>2</sup> The number of adoptions in a given year may not be the same as the number of cities in which the plan takes effect during the same year. A plan which is adopted in a certain year may not become effective until a year or more later.

TABLE IV

CHRONOLOGY OF ABANDONMENTS BY POPULAR VOTE: CITIES, VILLAGES,  
TOWNS, AND TOWNSHIPS IN THE UNITED STATES.

<i>Year</i>	<i>Abandonments</i>	<i>Accumulated Total</i>
1919 Denton, Texas .....	1	1
1921 Hot Springs, Ark. ....	1	2
1922 Waltham, Mass. ....	1	3
1923 Lawton, Okla., Akron, O. ....	2	5
1927 Santa Barbara, Cal., Tampa, Fla.	2	7
1928 Albion, Mich. ....	1	8
1929 Fort Myers, St. Cloud, Fla. ....	2	10
1930 Collinsville, Okla. ....	1	11
1931 Cleveland, O. ....	1	12
1932 Lima, O. ....	1	13
1933 Orange, Mass., Sulphur, Okla. ..	2	15
1934 Fall River, Mass., St. Albans, Vt.	2	17
1936 Stevens Point, Wis. ....	1	18
1937 Cape May, N. J., Binghamton, N. Y.	2	20
1938 Ashland, Ky. ....	1	21
1939 Trenton, N. J. ....	1	22
1940 Huron, S. D., Hardwick, Vt. ....	2	24
1944 Mason City, Ia. ....	1	25
1946 Waco, Tex. ....	1	26
1947 Cocoa, Fla., Gainesville and Hous- ton, Tex., Bennington village and Bennington town, Vt. ....	5	31

This table is based on information obtained from successive editions of the *Municipal Year Book* and A. W. Bromage, *Manager Plan Abandonments* (New York, National Municipal League, 1940). In addition to the abandonments listed in the table, the manager plan has been discarded by one county (San Mateo County, California, 1937) and one Canadian city (Brandon, Manitoba, 1931). Brattleboro, Vermont, abandoned the plan in 1931 but re-established it in 1942. A few other cities are not included in the table because the plan became inoperative as a consequence of legislative action, court decision, or annexation. Of the 143 referenda on the question of abandoning or retaining the plan during the period from 1930 to 1947 inclusive, 76% resulted in a favorable vote for retention.

A factor bearing on the rate of progress in adoptions is the authority of cities to establish the plan. At present, the municipalities of eight states (Connecticut, Delaware, Florida, Indiana, Maryland—except Baltimore, Mississippi, Nevada, and Rhode Island) must obtain the specific consent of the state legislature, but in the other 40 states at least certain designated classes of municipalities, if not all, are empowered to install council-manager government if they so desire.

Of the 6,658 municipalities with a population of 1,000 or over, about two-thirds possess the necessary authority under home rule provisions, optional charter laws, or legislation permitting establishment by ordinance. The remainder lack definite authority to establish the plan. None of them may

adopt manager charters, and their only alternative, until legislative permission in some form is obtained, is to proceed by ordinance. The legality of this procedure is doubtful in the absence of enabling legislation.

Moreover, quite apart from the legal angle, establishment of the manager plan by ordinance is disadvantageous in two respects. In the first place, it is necessary to fit the office of manager into a combination of offices already established by charter and constituting some other form of government; and, secondly, the ease with which ordinances may be modified or repealed renders the manager's position insecure and uncertain. Of the 756 municipalities included in Table III, the plan has been established by charter in 617 and by ordinance in 139.

The distribution of the council-manager plan among cities by population groups is as follows: over 100,000—20; 50,000 to 100,000—32; 25,000 to 50,000—58; 10,000 to 25,000—150; 5,000 to 10,000—157; 2,500 to 5,000—120; and 1,000 to 2,500—83. For the 6,658 urban places with a population of 1,000 or over, the proportion of manager cities is 9.3%; and for each of the population groups listed above, beginning with the largest, the proportions are 22.8%, 30.2%, 27.3%, 22.7%, 16.3%, 8.2%, and 2.6%.<sup>8</sup> Nearly one-fourth of the cities with a population of 10,000 or over have adopted the plan. One reason for the low percentage of adoptions in cities below 5,000 is the failure of most state constitutions or state legislatures to grant the necessary authority to small municipalities. The ten largest cities (1940 census) are Cincinnati, Ohio, (455,610), Kansas City, Mo. (399,178), Rochester, N. Y. (324,975), Oakland, Cal. (302,163), Dallas, Tex. (294,734), Toledo, Ohio (282,349), Norfolk, Va. (234,949), Dayton, Ohio (210,718), Oklahoma City, Okla. (204,424), and San Diego, Cal. (203,341). Teterboro, N. J. (40), is the smallest.

Maps showing the geographical distribution of the council-manager plan indicate that the areas in which the largest number of adoptions are recorded are: (1) the Atlantic coastal region from Florida to Maine, (2) the east north-central group of states bordering the Great Lakes, (3) the south-central group consisting of Kansas, Oklahoma, and Texas, and (4) the Pacific coast region, chiefly California.

Relatively few manager cities are found in the Mississippi Valley states and in the Rocky Mountain region. The states having the most council-manager municipalities are Maine (88), Michigan (67), Texas (60), Virginia (52), California (48), Florida (48), and Pennsylvania (37).

### THE COUNCIL

The council is the dominant organ of government under the council-manager plan. Practice varies in regard to the official title given this body. Most cities employ the terms "council" or "commission", but a minority of municipalities use such designations as "board of commissioners," "board of aldermen", "board of trustees", "board of directors", and "selectmen."

<sup>8</sup> *Ibid.*, p. 230, Table IV.



"Council", which is the most appropriate of these titles, is being adopted by a steadily increasing number of cities.

The council's authority in relation to other officials of the city, including the manager, is sufficiently great to insure the prevalence of its will, and unless a majority of its members are competent and devoted to the cause of good government, the results achieved under the manager plan may prove to be little or no better than under other patterns of organization. Consequently, such matters as the size of the council, the qualifications for membership, the methods of nomination and election, the term of service and devices for effective popular control deserve careful attention in the drafting of charters. Proper provisions concerning these matters will increase the chances of obtaining satisfactory councils.

**Size of the Council.** For the 433 council-manager cities having a population of more than 5,000, the size of the council, including the mayor, ranges from 3 to 20. All of the six manager cities in the population group from 250,000 to 500,000 have a council composed of nine members, but for each of the population groups below 250,000 the most frequent size is five. The median for the several classes of cities is as follows: 250,000 to 500,000—9; 100,000 to 250,000—9; 50,000 to 100,000—7; 25,000 to 50,000—6; 10,000 to 25,000—5; and 5,000 to 10,000—5.<sup>4</sup> Cities with a population under 5,000 usually have a council consisting of 3 or 5 members. The largest council so far established in any city operating under the council-manager plan was the 25-man council of Cleveland, O., which reverted to mayor-council government in 1931.

Although the twentieth century movement for smaller city councils was in no sense confined to any particular form of government, the usual arguments in favor of small policy-determining bodies were supplemented by special considerations in the case of the council-manager and commission plans. The sponsors of both often asserted that these plans represented an application of the principles of the corporate type of business organization in the governmental field and advocated a small council analogous to the board of directors of a corporation.

This contention probably influenced many persons who participated in the drafting of council-manager charters, especially the business men who played a leading part in bringing about the adoption of manager government in many communities. Another consideration was the anticipated effect of the size of the council upon its relations with the manager. A closer and more satisfactory relationship was deemed likely to develop between the manager and the council if the latter were composed of a few rather than a large number of members. These points were stressed along with the several advantages ordinarily claimed in behalf of small councils, viz., greater efficiency, more informal discussion, the attraction of better men because of the greater prestige attached to service on a small body, a

<sup>4</sup> *The Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), p. 44, Table V.

better opportunity for more effective participation by each councilman, a better chance for members to become acquainted with one another, a shorter ballot, and more effective popular control.

In regard to this problem of proper size, it should be noted that large councils in no way violate any basic structural principle of the manager plan. The question is merely one of expediency to be settled from the standpoint of local circumstances and the probability of attaining satisfactory results. Generally speaking, experience has demonstrated the superiority of the small council and substantiated the claims of its proponents. A membership of from three to nine seems suitable for most cities, but the establishment of precise maximum and minimum limits is unwarranted from a scientific standpoint.

In the case of large municipalities, an increase in size is often asserted to be desirable in order to provide adequate representation in the performance of the deliberative function. As pointed out in previous chapters, however, large size is in itself no guarantee of representative character. The Cleveland council of 25 was always representative of the general public because of election by the Hare system of proportional representation, but there is no reason to believe that it was more representative than the nine-man councils of Cincinnati and Toledo which are selected in the same manner.

Since virtually all council-manager cities have had small councils, reliable conclusions cannot be drawn concerning the effect of a large membership upon the operation of the manager plan. Opinions differ as to whether or not the Cleveland council was too large, and in any event the experiences of a machine-ridden community like Cleveland are inconclusive. Although the size of the council may be a matter of minor importance, the author believes that the arguments for a small council outweigh those against it and that large councils should be avoided whenever local circumstances permit.

**Qualifications for Membership.** The most commonly prescribed qualifications for service on the council are the right to vote and a period of residence in the city, usually one, two, or three years. Sometimes a ward or district residence of a month or more is required. Among other qualifications expressly stipulated in the charters of one or more cities are United States citizenship; a minimum age higher than required for voting, e.g., 25 or 30 years; ownership of property; payment of taxes; and male sex. All but one of these requirements are exceptional in character. United States citizenship, although specifically mentioned in only a small percentage of charters, is now essential to possession of the "right to vote" in all states.

Disqualifications for membership in the council include the following: any interest in municipal contracts; holding of any other public office; conviction of crime; ownership of public utility bonds or stocks; indebtedness to the city, the state, or the national government; and parties in

litigation with the city. Only the first of these disqualifications is found in the charters of practically all cities.

The general character of the qualifications and disqualifications listed above indicates that the framers of city manager charters believe that councilmen should be loyal to the United States, interested in the affairs of the city, acquainted with local conditions, and without a special or selfish interest in the expenditure of public monies. No attempt is made to limit service on the council to persons with expert knowledge in regard to municipal problems. Under the manager plan, a place is provided for the expert in the office of manager, in the headship of administrative departments, and in the various subordinate positions included within the administrative organization. The appropriate rôle for the layman is service on the dominant council and on advisory bodies.

**Methods of Nomination and Election.** In approximately three-fourths of the cities operating under the manager plan, the members of the council are elected from the city at large. The remainder provide for the choice of councilmen either by wards or by an arrangement under which some are selected at large and the rest by wards. There is considerable variation in the details of election provisions.

Of the cities which elect all members of the council at large, a small percentage have arranged for district representation in various ways. Among these departures from the normal plan of nomination and election at large without reference to districts are the following: (1) nomination and election at large—an equal number of councilmen, usually one, being chosen *from* each of a designated number of districts; (2) nomination and election at large—the mayor being chosen from the city at large and councilmen *from* districts; (3) nomination *by* districts combined with at-large election *from* districts; and (4) nomination *by* districts and election of the mayor at large. The feature common to these plans is division of the city into districts and provision for the representation of each district by at least one councilman chosen by the entire municipal electorate.

Various arrangements also are found in the group of cities in which councilmen are elected by wards. For instance, some elect one councilman per ward, whereas others increase the number of representatives per ward to two or more. Again, in those cities with a combination of at-large and ward elections, only the mayor-councilman may be elected at large and the remainder by ward constituencies, or the number of those selected at large may be two or more.

The marked preference for at-large elections in council-manager cities is attributable to the same reasons which have led to the establishment of this system under other forms of city government. Election by wards or districts has an unfortunate effect upon the attitude of councilmen toward city business, usually results in the selection of inferior men, increases the

difficulty of destroying the power of political machines, and detracts from the effectiveness of popular control over the council as a whole.

Although election at large is hardly an indispensable feature of the manager plan, the experiences of those cities which have provided for the ward system indicate that city-wide selection of councilmen is preferable. If the local demand for district representation be particularly strong, a compromise plan involving at-large election *from* districts should prove more satisfactory than nomination and election by wards.

The usual type of election in council-manager cities is the single choice-plurality plan under which the voters are permitted to cast one vote for each seat to be filled and the winning candidates are those polling the most votes. If all but two candidates per seat to be filled are eliminated by holding a non-partisan primary, which is the procedure in many cities, the vote obtained by the winners will be a majority as well as a plurality. A minority of cities have sought to achieve majority selection by providing for a second election if a majority is not obtained at the first election, or by adopting some majority preferential voting scheme, usually the Bucklin plan. Twelve council-manager cities are using, or soon will use, the single transferable vote system of proportional representation.<sup>5</sup> Provision for the representation of competing political parties and groups of like-minded voters in proportion to their voting strength is consistent with the principles of council-manager government. The *Model Charter* sponsored by the National Municipal League provides for P.R. as an alternative to a non-partisan, at-large election by the single-choice plurality system.

Non-partisan elections are favored by a very substantial majority of the cities operating under the manager plan. Approximately four out of five have prohibited party designations on the ballot in the hope that contests for election to the council will be based on local issues and on the merits of opposing candidates rather than on irrelevant national and state political considerations. Although the success of this attempt to concentrate the attention of the voters on local questions depends upon circumstances peculiar to each locality, the adoption of any device which tends to discourage support of candidates merely because of party affiliation and without reference to local problems should be given serious consideration.

With respect to methods of nomination, manager cities have tried about every procedure so far developed in the United States. By far the great majority have provided for either the non-partisan primary or nomination by petition. Nomination by partisan primary, by partisan caucus, by party committee, by party convention, and by simple self-announcement also have been arranged for in one or more cities. The popularity of nomination by non-partisan primary or by petition is attributable to the marked preference for non-partisan elections.

**Terms of Office.** Nearly half (44.2%) of the council-manager cities over 5,000 in population have established a four-year term for members of

<sup>5</sup> The cities are Cambridge, Lowell, Medford, Quincy, Revere, Saugus (a town), and Worcester, Mass.; Hopkins, Minn.; Cincinnati, Hamilton, and Toledo, O.; and Wheeling, W.V.

the council and slightly more than 40% have provided for a two-year period of service. A three-year term has been prescribed in approximately one-tenth of the cities and the small remainder have fixed the term at one, five, or six years.<sup>6</sup>

The plan of staggering the terms of service of councilmen has been adopted by most council-manager cities. Three out of every four have deemed it desirable to prevent the terms of all councilmen from expiring at the same time. The details of the arrangements for overlapping terms depend upon the size of the council and the length of the term.

For example, with a council of five and a four-year term, a common practice is to select three councilmen at one election and the others two years later, but if the council consists of three members serving for three years, the election of one councilman every year is the likely arrangement. As might be expected, a variety of schemes of rotation have been devised by the framers of charters.

Whether formal provision for the partial renewal of councils is desirable in connection with council-manager government is a controversial question. Practically all of the arguments for and against the overlapping term are the same as under other forms of city government. The primary special consideration seems to be the effect of this arrangement on the relations between the manager and the council. Proponents claim that the presence of holdover members on the council will add to the security of the manager's position and promote better understanding of his policies and methods by the council as a whole. Opponents contend that this may prove to be the case if the holdover councilmen are friendly toward the manager, but that otherwise a contrary result may be expected. They also assert that even when the terms of all councilmen expire at the same time, one or more probably will be re-elected, and that provision for effective popular control of the entire council is more important than a problematical strengthening of the manager's position. Available evidence seems to indicate that the question of the overlapping term is one of minor importance as compared to other problems pertaining to council-manager government.

**Compensation of Councilmen.** The range of compensation for councilmen is from none to a maximum of \$5,000 per annum. Of 360 manager cities with a population of 5,000 or over, three-fourths pay \$300 or less, one-half pay \$150 or less, and one-fourth pay nothing.<sup>7</sup> Nominal compensation is the prevailing policy. As for the form of payment, most cities provide an annual or monthly salary, but a substantial number prescribe a rate of compensation per attended council meeting which ranges from \$1.00 to \$10.00 but is \$5.00 in most instances. Some cities in the salary group deduct a small percentage for each meeting from which the councilman is absent. Those which pay a certain sum per meeting attended almost always place a limitation upon the number of "compensated" meetings or specify a total sum which may not be exceeded during a designated period of time.

<sup>6</sup> *Ibid.*, p. 46, Table VII.

<sup>7</sup> *Ibid.*, p. 48, Table IX.

The remuneration of councilmen is determined by charter provision in a large majority of cities. In the others, the amount is usually left to the discretion of the council, subject, in some instances, to such limitations as the following: not to exceed a maximum stated in the charter; within maximum and minimum limits fixed by charter provision; subject to ratification by the voters; to be determined prior to elections; to be a specified amount until otherwise fixed by ordinance; no ordinance fixing or changing salary to become effective during current term of office of councilmen. Salaries are fixed by a court-appointed commission in a number of Virginia cities and by the state legislature in Kansas in the event that no action has been taken by local ordinance subject to approval by popular vote.

The primary factors to be considered in determining the amount of compensation are the time required for the performance of councilmanic duties and the effect upon the caliber of men willing to serve on the council. In theory, the work of the council under the manager plan, although highly important, should not be so great in volume or of such a nature as to necessitate the expenditure of very much time. Consequently the policy of either no compensation or a nominal amount seems justifiable.

However, the amount of time which councilmen devote to city business depends upon such variable factors as the size of the city, the quantity of business, local political circumstances, the extent to which the council undertakes to deal with administrative matters that should be handled by the manager and department heads, procedures imposed by law, and the inclinations of particular councilmen. Since many of these factors are beyond anticipation by the framers of charters, the best policy would seem to be to leave the determination of compensation to the discretion of the council or to assume part-time service as normally sufficient and to provide a fair remuneration on that basis, unless there be good reason to believe that a substantial compensation will really prove effective in attracting better men to the council and in encouraging the conscientious performance of duties.

**Powers and Duties.** The council possesses powers commensurate with its full responsibility for results achieved under the manager plan. Its primary functions are the determination of policy, the selection of a manager to act as its agent in the field of administration, and the evaluation of results. It also decides many questions relating to administrative organization and procedure, performs various routine acts required by law, and exercises a number of miscellaneous powers, e.g., the appointment of a few officials, or the review of assessments.

As a policy-determining body, the council enacts ordinances or adopts resolutions designed to achieve the purposes for which the municipal corporation has been created. The scope of its discretionary authority is limited by the city charter and other applicable laws of the state. Many ordinances establish policies which prescribe the rights and duties of individuals

in their relations with one another or with the city government. Another category of ordinances and resolutions deals with the construction and maintenance of public improvements. The financial policy of the city also is determined by the council which possesses final power to authorize expenditures, to levy taxes, and to borrow money. Generally speaking, the council decides upon the nature and scope of the services to be rendered by the city government, provides the essential funds, and imposes necessary restraints upon the conduct of individuals and the use of property. In these and other matters, the council is assisted by the manager who may recommend, suggest, and advise, but may not decide.

With respect to administrative organization and procedure, the council enjoys extensive authority. In so far as problems of this type are controlled by binding charter provisions, the council's hands are tied, but otherwise such questions as the number of administrative departments and their functions, the internal organization of departments, the number and character of subordinate offices, and appropriate administrative procedure fall within the discretionary power of the council. Many charters provide for the existence of certain departments and prescribe general basic procedures to be followed in such matters as budgeting, purchasing, and the assessment of property for taxation, but often some of these provisions are merely directive rather than mandatory in character. In any event the council usually possesses authority to determine the details of organization and procedure.

The best practice probably is to leave the entire question of departmental organization and most matters of procedure to the council. It then would be able to enact one general ordinance establishing an administrative code subject to alteration at any time that circumstances may require. A wise council would rely to an appreciable extent on the recommendations of the manager and even delegate to him extensive discretionary authority concerning administrative organization and procedure.

The routine acts which councils are required to perform depend on the provisions of the city charter and applicable state laws. Most of them pertain to administration. Many councils find it necessary to devote quite a bit of time to these matters. Examples of acts of a routine type are the opening of bids, the awarding of contracts, the ratification and acceptance of leases and deeds for property and rights of way, refunding taxes, receiving reports, transferring funds, approving claims against the city, and considering petitions from citizens. The greater the mass of detail which the council is required to handle, the less time it has to devote to the more significant problems of general policy.

In addition to the activities so far described, councils exercise a variety of miscellaneous powers which vary from city to city. Some councils act as boards of health, boards of equalization of assessments for taxation, boards of review of special assessments, or boards of education. Authority to appoint and remove certain officers, e.g., the city clerk or the city attorney, and the members of various boards and commissions, such as the city

planning and civil service commissions, is frequently conferred by charter provision. More rarely, and fortunately so, the council is required to approve the manager's appointments. Service on advisory and public relations boards of one description or another also is likely to be a duty of councilmen.

Appointment and removal of the city manager are powers of the council which constitute a basic feature of the council-manager plan. The type of man chosen by the council has a vital bearing upon the standard of city government in general and the quality of administration in particular. A competent manager not only provides the expert touch that produces desirable administrative results, but also proves of great aid to the council in the discharge of its various responsibilities. The council is able to exercise continuous control over the manager who acts as its agent in the administration of policies.

Under the council-manager plan, councilmen are neither to act as heads of administrative departments nor to undertake the task of directing, controlling and supervising the field work of administrative officers and employees. To guard against council assumption of functions to be performed by the manager and his administrative subordinates, many charters contain provisions of the following kind:

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from, office by the city manager or by any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. Any councilman violating the provisions of this section, or voting for a resolution or ordinance in violation of this section, shall be guilty of a misdemeanor and upon conviction thereof shall cease to be a councilman.<sup>9</sup>

Such a provision is designed to serve as a legal safeguard against councilmanic usurpation of the administrative function. Whether it has proved effective is a question that will be considered in the following chapter. The underlying theory is sound and the position of the council is in no way weakened by barring the council from controlling appointments and removals and from taking charge of administration. A sufficient degree of council control over administration is insured by its power to hire and fire the manager, by its control of the purse strings, by its authority to adopt ordinances and resolutions directing administrative action to be taken, and by its power to investigate the affairs and conduct of any department, office, or offices of the city government.

An important function of the council is to maintain satisfactory relations with the public and to undertake the task of leadership in regard to questions of policy. These important responsibilities arise from the fact that the council is a representative body authorized to determine the policies of the city government. The conduct of public business in a democracy in-

<sup>9</sup> *Model City Charter*, rev. ed., 1941, Art. II, Paragraph 11.



volves due consideration of public opinion, the promotion, explanation and defense of policies, and participation in the political activities of the people.

Councilmen, being chosen by popular vote to represent the people, are the officials who should act as spokesmen for the city government whenever issues of a controversial character arise. If the manager enters the political arena, his standing as a neutral and expert administrator usually is impaired and his dismissal is almost inevitable once the opposition gains control of the council. Political leadership is the business of the council; political neutrality should be maintained by the manager.

**Council Procedure.** Subject to such limitations as may have been incorporated in the charter, the council is empowered to decide upon the frequency of its meetings and to devise its own organization and rules of procedure. The charter may provide that a regular meeting shall be held at least once during some prescribed period, e.g., once a month, but the council may arrange for more frequent meetings by ordinance in consideration of the normal amount of business to be transacted. Moreover, special meetings may be called by the mayor, the manager, or a specified number of councilmen, depending upon the provisions of the charter. Although both regular and special meetings are usually required to be open to the public, the council is likely to possess authority to provide for closed executive meetings by vote of an extraordinary majority of its members. The manager, the city attorney, and the city clerk practically always attend council meetings. Attendance by the manager is a duty and in many cities the manager prepares the business to be considered by the council.

Under the manager plan, the mayor is presiding officer of the council. A vice-chairman, chosen by the council from its own membership, acts as mayor pro tem. Apart from the city clerk who keeps the records of the council, the organization is completed by the establishment of standing or special committees for investigation and report on matters which may be referred to them.

Many councils make no provision for standing committees and substitute the device of "the committee of the whole" or create special committees as occasion demands. The small size of the council in most manager cities, the availability of the manager and his aides as sources of information, and the fact that the council is not supposed to take direct charge of administration are among the reasons why councils can function successfully without standing committees. Large councils are more likely to utilize such committees, but the determining factor in most cases seems to be the strength of local tradition in this matter.

#### THE MAYOR

An officer, usually designated as "mayor" but sometimes given the title "president" or "chairman", almost always is provided for in cities operating under the manager plan. The typical mayor is a full-fledged member of the

council who presides over its meetings and enjoys the distinction of being the titular head of the city government. He lacks the administrative authority and the veto power of the mayor under the mayor-council system.

**Method of Selection.** In a majority of municipalities the mayor is chosen by the council from its own membership, but in a substantial number the method of selection is by direct popular vote. For 433 council-manager cities with a population over 5,000, the prospective proportions are 55.6% and 41.4%<sup>9</sup> A few charters provide that the candidate polling the largest vote in the election of councilmen shall be the mayor and in several cities which have overlapping terms of service for members of the council, each councilman becomes mayor during his last year in office.

Of the four methods of selection, the one most widely used is probably the best in view of the nature of the mayor's position. His most important functions are to preside over meetings of the council and to act as its spokesman whenever necessary to promote or to defend its policies. A mayor chosen by the council is more likely to command its confidence than one selected by the voters or placed in office by reason of vote-gathering ability or as the result of some scheme of rotation in office.

**Term of Office.** In considering the term of office, it is necessary to distinguish between the period of service as mayor and the term served as a member of the council. The two coincide in many cities, but frequently the former is shorter than the latter. Obviously, the method of selection and whether or not councilmanic terms overlap are the chief determining factors.

If the mayor be chosen by popular vote, his term of office is usually the same as that of the other members of the council, but there are some charters which prescribe a shorter term, e.g., four years for the councilmen and two years for the elected mayor-councilman. In cities in which the terms of all councilmen expire at the same time and the mayor is selected by the council from its own membership, the mayor's term ordinarily is identical with that of the council. However, a shorter term sometimes is provided.

If councilmanic terms overlap, as they do in most manager cities, and the council selects the mayor, provision is commonly made for the selection of a mayor following each election. Consequently, the individual who is selected serves a shorter term as mayor than he does as a member of the council. In the few cities which provide that each councilman is to become mayor during his last year in office, the period of service as mayor is necessarily shorter than the time served on the council. If the candidate for council polling the highest vote acts as mayor, the term is the same as that of councilmen. Instead of establishing a fixed term for the mayor, some charters which arrange for selection by the council stipulate that the mayor shall serve at the council's pleasure.

Perhaps the most significant observation concerning the variety of arrangements with respect to the mayor's term of service is that with few ex-

<sup>9</sup> *The Municipal Year Book, 1948, p. 42, Table II.*

ceptions, the person selected in one way or another to act as mayor serves on the council for the same length of time as other members even though his term as mayor may be more limited in duration. The occasional departure from this arrangement are found in the group of cities which provide for popular election of the mayor.

Whether a fixed term for the mayor is preferable to service at the pleasure of the council is difficult to say. Of course, popular election necessitates a definite term, but selection by the council is compatible with either arrangement. Service at the council's pleasure seems to be consistent with the mayor's rôle as presiding officer and spokesman for the council.

**Compensation.** Arrangements regarding the compensation of the mayor vary as greatly as those with respect to the method of selection and the term. Many charters stipulate that the mayor shall receive the same pay as councilmen, but in a large number of instances provision is made for a higher compensation. Although the additional amount paid the mayor is usually small, there are quite a few cities in which his compensation is two, three, four, or more times as great as that of councilmen.

Whatever the relationship between the remuneration of the mayor and councilmen, the prevailing practice is to provide a nominal compensation. As of January 1, 1948, 120 cities out of 178 with a population of 10,000 or over paid the mayor less than \$1,350 per annum. Most of them paid considerably less. The highest annual salary was \$7,500 and the lowest compensation was \$50.<sup>10</sup>

Higher pay for the mayor than for other members of the council is justified on the ground that more time will be required for the performance of his duties. Limited as his legal authority is, his position as titular head of the city government is likely to involve various time-consuming activities, e.g., attending banquets and making speeches. If the mayor acts as spokesman for the council and assumes the responsibility of leadership in the political field, as he is supposed to do, the demands on his time and effort may prove heavy. Particularly in the larger cities, it is desirable that the mayor be sufficiently well compensated to encourage the discharge of responsibilities of this type in a satisfactory manner.

In most cities, the compensation of the mayor is fixed by charter provision. Sometimes, however, the matter of salary is left to the discretion of the council, either entirely or subject to limits, usually a maximum, prescribed by the charter, and in a few instances the amount to be paid is determined by some external authority, e.g., a court-appointed commission (a number of Virginia cities).

**Powers and Duties.** A point to be stressed with respect to the powers and duties of the mayor under the manager plan is that he is not the head of the administrative branch of the city government. The manager acts in that capacity. Consequently, such functions as the direction and control of

<sup>10</sup> *Ibid.*, pp. 104-106, Table VII.

administration, the appointment and removal of department heads and subordinates, and preparation of the budget fall outside the scope of the mayor's authority.

The mayor is merely the titular head of the city government. As such, it is his duty to represent the city on ceremonial occasions and in various dealings with outside agencies of government. He entertains visitors to the city, attends banquets, makes speeches, and receives recognition as official head of the government by the governor for purposes of military law and by the courts for serving civil processes.

The most important functions of the mayor pertain to policy-determination. As a member of the council, particularly if chosen by the council from its own membership, the mayor enjoys the same privileges as other councilmen with respect to the introduction of ordinances and resolutions, participation in discussion, and voting. A comparatively small number of cities permit him to vote merely in case of a tie, and a few deny him even this privilege. The mayor is the presiding officer of the council and in this capacity possesses such powers as are conferred upon him by the rules of procedure of the council. Most charters authorize him to call special council meetings. Generally speaking, the mayor's privileges as chairman of the council are of minor significance.

The typical mayor performs administrative functions only as a member of certain boards or commissions and in times of emergency. He is sometimes given membership on the sinking fund commission, the city planning commission, or the board of equalization and review of assessments, but arrangements vary so greatly from city to city that generalization is out of the question. His emergency powers are ordinarily derived from charter provisions to the effect that the mayor shall exercise the powers of a sheriff in emergencies or shall take command of the police and other departments and govern the city by proclamation in an emergency. Usually the consent of the council is required. The emergencies contemplated are those resulting from riots, revolution, or some disaster such as a flood or earthquake. Even if authority to govern the city in an emergency is not granted to the mayor by express terms of the charter, the power to do so is generally recognized as being conferred upon him under the rules of common law. Since emergencies seldom occur, this power of the mayor adds little to the strength of his position.

The foregoing constitute the powers and duties of the typical mayor under the manager plan. However, in exceptional instances, attempts have been made to increase the importance of the mayor's office by granting additional authority, usually by permitting him to appoint certain minor officials or the members of several boards. A few cities grant him a suspensory veto, e.g., Kalamazoo, Mich., and in one or two cases he is authorized to appoint the manager subject to the approval of the council. In some municipalities the mayor possesses the judicial powers of a justice of the peace. Most sponsors of council-manager government disapprove of these efforts to strengthen the mayor's hand. Their chief objection is to conferment of the veto power and authority to select administrative officials.

**Political Leadership.** Although his office seems insignificant from a legal standpoint, the mayor has an important function to perform as chief spokesman for the council in the political field. He is supposed to provide leadership in the initiation of new policies, in the development of public support for them, and in the defense of established policies whenever occasion arises. Unless either the mayor or the council as a whole assumes the responsibility of justifying the stand taken by the council on controversial issues, the manager is almost certain to be drawn into political conflicts, with the probable result that his reputation and his value as an impartial administrator will be impaired.

Unburdened by the heavy responsibility of administrative management, the mayor has the time to devote to the general task of political leadership. His various social functions, e.g., speech-making, as official head of the city bring him into contact with the various interest-groups in the community and afford him an excellent opportunity to cultivate and retain the confidence of the general public. With these advantages, the right type of man may be able to furnish effective leadership in the field of policy.

A number of mayors, for example, Murray Seasongood and Russell Wilson of Cincinnati, have been notably successful in this respect. Whether the manager plan might be modified in certain respects to provide a more substantial legal basis for political leadership on the part of the mayor is a problem that will be considered in the following chapter.

### THE MANAGER

The manager is the official upon whom public attention is most likely to center, partly because of his professional status and the important functions assigned him and partly because people in general are inclined to concentrate attention on the activities of one fairly conspicuous officer rather than on those of a group such as the council. Nevertheless, the council rather than the manager bears the ultimate responsibility for the success or failure of the city government.

**Selection and Removal.** An indispensable feature of the council-manager plan is selection of the manager by the council. Equally essential is authority on the part of the council to dismiss the manager at pleasure. Without the powers of selection and removal the council would be unable to exercise that continuous and effective control over the manager which justifies the usual reference to him as a "controlled executive." Nor could the council be credited with the achievements and held to account for the failures of the city government.

The descriptive title "council-manager plan" becomes a misnomer if the council lacks authority to hire and fire. Thus, if a charter creates an office entitled "manager" and assigns to this office the powers which a manager normally possesses but provides for filling the office by popular election for a fixed term, the pattern of government actually falls within the "mayor-

council" category. Neither the character of an office nor the nature of a system of government is determined by the titles which the framers of charters happen to use.

The council's discretion in the choice of a manager is limited legally merely by the qualifications and disqualifications which are set forth in the charter. Ordinarily, these are for the most part so broad and indefinite in character that the council enjoys practically unlimited discretion in making a selection.

General stipulations to the effect that the man chosen as manager must be competent, a good executive, or a person of good judgment frequently are incorporated in charters. Provisions of this type have little or no legal significance because of their lack of precision. Among various other qualifications which are found in one or more charters are the following: United States citizenship; a minimum age such as 21, 25, or 30 years; a professional engineer; previous experience as a city manager if such a man be available; business or executive experience; and education or training for the position.

Specific disqualifications are found in a number of charters. Examples are statements that the manager shall have no interest in municipal contracts, shall not be in debt to the city, or shall not be a member of the council or related to a councilman.

A very common and most important stipulation is that the manager need not be a resident of the city at the time of appointment. This negative provision is significant because it marks a departure from the traditional requirement in local units of government in the United States that local residence is essential to the holding of local offices. If the manager need not be a resident, the council is free to secure the services of the best man available no matter where he may reside, and men who are interested in pursuing a managerial career are afforded a real opportunity to do so. A few charters adhere to the residence requirement by expressly requiring residence in the city at the time of appointment or by stipulating that the manager shall be a qualified voter of the city. An occasional charter specifies that the manager shall be a resident of the state.

Generally speaking, the fewer the legal limitations on the discretion of the council in selecting the manager the better. Complete responsibility for the type of man chosen rests on the council and the voters are in a position to hold the council to account for the manner in which it exercises its discretion. In view of the widespread belief that local offices should be held by local residents, a definite provision that the manager need not be a resident at the time of selection is highly desirable. Such a declaration removes an unsatisfactory legal limitation on the selective authority of the council.

Requirements to the effect that the manager should be competent and possess executive ability do no harm. Although legally meaningless, they may have some value in directing the attention of the council and the citizens to the type of man who ought to be selected. On the other hand, a

charter stipulation that the manager should be a member of a designated profession, e.g., engineering or law, constitutes a most undesirable type of restriction on the discretion of the council.

Most charters grant the council an unlimited power of removal, but a substantial number impose minor restrictions intended to discourage dismissals for reasons other than incompetence or in such a manner as to work hardship on the manager. Among the variety of limitations are: (1) the presentation of written charges followed by a public hearing if demanded by the manager; (2) a public hearing if the manager be removed after a stated period of service, such as six months, one year, or longer; (3) a public hearing if removal takes place before the expiration of one year of service; (4) dismissal only for cause; (5) dismissal only for cause during the first year following appointment; (6) an extraordinary majority of the council in favor of removal, e.g., four out of five members; (7) advance notice of not less than one, two, or three months.

Only the fourth and fifth of these restrictions provide the manager with an opportunity to have the decision of the council set aside. If the council may remove only for cause, the courts may be resorted to in order to obtain judicial determination of the sufficiency of the cause. None of the other limitations deprives the council of the power of final decision concerning the manager's fate.

Since the manager plan is based on the principle of popular control of the city government through a fully responsible council, restrictions upon the removal power which prevent the council from firing the manager at any time and for any reason which it deems satisfactory should be avoided. Procedural limitations designed to insure publicity and to guarantee adequate notice to the manager are unobjectionable. Nor is serious harm done by insuring security of tenure for a short trial period immediately following appointment, e.g., six months. However, legal barriers to removal are almost certain to produce unsatisfactory results once the manager, no matter how capable, has lost the confidence of the council majority. The sooner he departs, the better for all concerned. In fact, the manager should resign whenever it becomes apparent that he no longer commands the support of the council.

Occasionally, charters provide for removal of the manager through the recall procedure, i.e., the filing of a petition demanding recall of the manager followed by a popular vote on the question. This method, which supplements but does not replace removal by the council, enables the voters to get rid of a manager whom the council is unwilling to dismiss. The chief argument in favor of applying the recall to the manager is that the people ought to have direct control over an official whose rôle in the government of the city is as important as his.

Those who oppose this arrangement contend (1) that it violates a basic principle of the council-manager plan, viz., the complete and undivided responsibility of the elective council for the successes and failures of city government; (2) that the recall should be confined to officials chosen by

popular vote; (3) that the people are in no position to pass fair judgment upon an official who, as agent of the council, may be doing precisely what the council has ordered him to do, and (4) that the recall will hinder development of a politically neutral status on the part of the manager.

Indirect popular control of the manager through the council is generally recognized as being more satisfactory than direct popular control through the recall. Since the recall is applicable to the manager in only a few cities and since it rarely has been invoked in these, there is little practical experience on which to draw in discussing the pro and con of this question.

**Term of Office.** In by far the great majority of council-manager cities, the term of office of the manager is indefinite, i.e., he is appointed to serve for an indefinite time at the pleasure of the appointing authority. One of the controlling thoughts behind this arrangement is that a manager should hold his position as long as his service is satisfactory. Another is that the prospect of indefinite tenure based on merit will attract competent men to public service. Finally, of course, service at the pleasure of the appointing authority enables the city to rid itself at any time of an appointee who fails to live up to expectations.

A small minority of council-manager charters provide for employment of the manager for a definite term. For example, under the Virginia optional council-manager law, the council appoints the manager for three years and then may reappoint him for six years. Even in these cases, however, the council is empowered to remove the manager at any time. Thus the effect of the definite term is merely to compel periodic council consideration of the question of retaining the manager.

Failure to renew a manager's appointment amounts to a mode of dismissal without observance of special procedures which may be required by the charter in connection with removal at other times. This way of effecting a change in managers may prove less embarrassing to all parties concerned than removal under the indefinite tenure arrangement. It may, however, enable a council to terminate the services of a competent manager without making public the reasons for its action. The definite term also provides opportunity for a new understanding between the council and a manager whose services are to be retained. These same objectives can be achieved, when desired, under the indefinite term. It probably makes little difference in practice whether one arrangement or the other is provided for by charter provision.

**Compensation.** Most council-manager charters leave determination of the manager's compensation to the council. This arrangement is undoubtedly highly desirable. The council is free to pay whatever salary may be necessary to obtain and to retain the services of a competent man. It also is able to make salary adjustments to conform to changes in the cost of living. Some charters, however, impose maximum and/or minimum



limits, and a few establish a rate of compensation in relation to the population of the city.

The range of salaries paid city managers throughout the United States is very great. For 540 cities from which information was obtained early in 1948,<sup>11</sup> the maximum salary was \$25,000 and the minimum \$650. The average salary for 235 cities with a population over 10,000 was \$8,174; for 119 cities between 5,000 and 10,000, the average was \$5,244, and for 186 cities under 5,000, the average was \$4,107. In general, the amount of compensation increases with the size of the city, but some comparatively small communities are included within the high salary groups. If the services of a competent manager be secured, a high salary proves to be a sound investment for the taxpaying public.

**Powers and Duties.** The usual powers and duties of the manager may be grouped into two broad categories, viz., (1) those which are primarily related to the administration of policies, and (2) those which pertain to the determination of policy. The primary rôle of the manager is correctly described as administrative. However, he generally plays an important part in policy determination as an expert adviser to the council and very often as a community or civic leader. The extent to which it is proper for the manager to assume community leadership is a delicate and highly controversial question which will be given consideration in the next chapter.

In this section, discussion will be confined to the formal powers and duties of the manager in relation to both administration and policy-determination. These powers and duties often are enumerated in the city charter. However, council determination of the powers to be delegated to the manager is consistent with the underlying principles of the plan, and, in practice, whatever the charter provisions, the actual rôle of the manager in the municipal governmental process is shaped by the attitude of the dominant council.

The powers of the manager as administrative head of the city government are: (1) the direction, control, supervision, and coordination of the administration of city services; (2) the appointment and removal of department heads and subordinate officials and employees; (3) investigation of the affairs or conduct of any department, officer, or employee; (4) the enforcement of laws and ordinances; (5) preparation of the budget for submission to the council; (6) execution of the budget, as adopted by the council, through various financial and other controls over the operating departments, and (7) in many cities, the making of contracts and purchase of supplies within limits and subject to restrictions, e.g., approval of contracts by the council, established by the charter.

This list of administrative powers is accurate in a general way, but subject to modification so far as particular cities are concerned. For example, charters of some cities, especially the smaller ones, stipulate that the manager is to be the active head of designated departments; a few require

<sup>11</sup> *Ibid.*, pp. 103-107, Table VII; p. 491.

approval of the manager's appointments by the council; and a very large proportion confer the power to select one or more administrative officers on some authority other than the manager. Thus the voters, the mayor, or the council, rather than the manager, may select such officials as the treasurer, the controller, the assessor, the city attorney, or the members of the board of health. In ways too numerous to mention, the actual position of the manager in many cities fails to measure up in all respects to the following provision of the National Municipal League's *Model City Charter*, Art. III, § 25: "The city manager shall be the chief executive officer and the head of the administrative branch of the city government. He shall be responsible to the council for the proper administration of *all affairs* of the city——."

Under an ideal council-manager plan, the manager is in a position to function effectively as the general or over-all manager of all agencies engaged in the administration of city services. Administrative departments are small enough in number to be manageable and, for the most part, are so organized as to be unifunctional in character. Lines of authority run from the manager's office through the department heads, to the bureau and division chiefs, and through them to the lowest subordinates in the administrative hierarchy. Lines of responsibility run upward through the same channels and converge in the manager's office. Needless to say, this ideal organization is rarely, if ever, encountered in practice. The general problem of administrative organization in the field of city government is discussed in a subsequent chapter.

The powers and duties of the manager in relation to the determination of policy are: (1) making recommendations to the council in regard to questions of policy; (2) providing the council with such information as it may desire; (3) keeping the council informed about the financial condition of the city; (4) attending council meetings, with the privilege of participating in discussion; (5) preparing the business to be considered by the council, and (6) in some cities, calling special council meetings.

It is noteworthy that the rôle of the manager in the matter of policy-determination is merely advisory and informative. He has no vote in council proceedings and no veto over its actions. Although the manager's powers in regard to policy-determination are limited, his influence is likely to be great because of his prestige as the chief specialist in municipal affairs. As administrative head of the city government, he is in a position to know what is being done and what needs to be done, and if he be a man of ability who enjoys the confidence of the council, his suggestions concerning policy probably will be followed on many occasions. In general, the influence of managers has been substantial, but the extent of influence has varied from city to city and from time to time in particular cities.

#### THE COUNCIL-MANAGER PLAN AND THE INITIATIVE, THE REFERENDUM, AND THE RECALL

A substantial proportion of council-manager charters make provision for the initiative, the referendum, and the recall. As observed in the preceding

chapter, these instrumentalities of direct popular control have no necessary relation to any particular type of city government.

The recall enables the voters to get rid of undesirable councilmen before the expiration of the term for which they were elected. Such a means of exercising continuous control over members of the council probably should be placed at the disposal of the electorate in view of the extent of the council's authority under the manager plan. For reasons stated elsewhere in this chapter, however, the recall should not extend to the appointive manager. Fortunately, the framers of most council-manager charters have had the good sense to avoid this misapplication of the recall.

The advisability of providing for the initiative and referendum is a question which involves the same considerations under the manager plan as in connection with other forms of city government. These instrumentalities of direct legislation enable the electorate to establish policies which the council fails to adopt or to veto action which the council has taken. They are looked upon by many persons as desirable weapons to be used in emergencies when councils prove unresponsive to public demands, but the need for them seems to be no greater under council-manager than under commission or mayor-council government. In fact, in so far as structural arrangements have any particular bearing on the establishment of these devices, the need therefore would seem to be less in council-manager cities because of the superior qualities of the manager plan.

#### ADVANTAGES AND DISADVANTAGES OF THE COUNCIL-MANAGER PLAN

In campaigns for adoption of the council-manager plan, proponents and opponents invariably present a variety of arguments to the public. Some claims border on the fantastic; others have little or no bearing on the plan itself. However, many of the asserted advantages and disadvantages are deserving of careful consideration. These will be summarized in this section. The succeeding chapter, which deals with council-manager government in action, includes material which casts light on the validity of the typical contentions of friends and enemies of this form of city government.

**Claimed Advantages: (1) Simplicity.** The simplicity of the council-manager plan lies in the fact that the division of functions and the relations between the voters, the council, and the manager are logical, direct, and clearly defined. There is no complicated and confusing system of separation of powers and checks and balances. The qualified voters choose the council which decides questions of policy and selects a manager whose primary functions are to advise the council and administer the policies which it adopts. A simple pattern of organization, being easily comprehended by voters and officials, should be relatively easy to operate with a substantial measure of success.

**(2) A Short Ballot.** The voters need to elect only the members of the council. Being free to concentrate attention on candidates for this one

body and on issues of policy, they should be able to discharge the electoral function more effectively than if they were required to elect a variety of other officials.

**(3) Concentration of Authority and Definite Location of Responsibility.**

The council, a representative body, possesses full authority to determine the policies of city government and to control their administration. Unification of powers is a preventive of internal friction, irreconcilable conflicts, deadlocks, and uncoordinated action. With this extensive authority of the council goes a responsibility for results which cannot be shifted to any other agency. If the city be poorly governed, the voters may justly place the blame on the council, bring pressure to bear on it and, if necessary, administer a political spanking on election day.

**(4) Unified Administration.** Although the council is ultimately responsible for all phases of city government, the immediate responsibility for the administration of policy is placed on the manager who has sufficient authority to provide the type of unified administrative leadership and management which promotes effective and efficient action. Lack of a chief administrator with over-all powers of management is a defect of the commission form. The council-manager plan is free from this weakness.

**(5) Expert Administration.** Appointment of the manager by the council is a selective process which permits effective canvassing of the personnel market in order to obtain the services of a competent administrator. The job seeks the man. Persons who desire to become managers are spared the necessity of conducting election campaigns, demonstrating vote-getting or vote-grabbing ability, and making promises to politicians who control nominations and votes.

The council, being directly responsible to the voters for the good or poor quality of city government, has a potent incentive for selecting a competent manager. The manager in turn has everything to gain and nothing to lose by choosing qualified persons to serve as department heads and in subordinate administrative positions. A real opportunity is provided for expert administration without sacrificing the principle of democratic control.

**(6) A Controlled Executive or Administrator.** The manager serves at the pleasure of the appointing authority, i.e., the council. Consequently, he is subject at all times to control by the people's representatives. If he proves unsatisfactory in any respect, the council may resort to the drastic remedy of dismissal. By contrast, the people normally must put up with an *elective* executive, no matter how incompetent he may be, until the expiration of his legal term.

**(7) Harmonious Relations Between Council and Manager.** Harmonious relations between the manager and council are insured because

a manager may be removed from office if he fails to resign in the event of serious conflict. Costly deadlocks such as sometimes occur under the mayor-council plan are averted. The structural features of the council-manager plan promote the type of teamwork on the part of the policy-determining and administrative agencies of government which is essential to the achievement of satisfactory results.

(8) **Elimination of Politics from Administration.** The manager plan increases the chances of eliminating politics from administration. Among the characteristics of the plan which contribute to this end are definite location of responsibility, appointment rather than election of the manager, and assignment of the administrative function to the latter.

The manager has a special interest in making a good showing in the discharge of his primary function, administration. Spoils practices of one type or another endanger his reputation. Of course, there is nothing about the plan which prevents politicians and political machines from gaining control of the council. An obedient and spoils-minded manager then may be placed in office. If that be done, however, there is no opportunity for the dominant politicians to dodge responsibility for the immediate and ultimate results of their action. The voters know whom to blame and how to remedy the situation if they so desire. Unscrupulous politicians prefer a complex and disintegrated type of government like the weak mayor-council plan which affords countless opportunities for confusing and deceiving the public.

(9) **Appropriating and Spending Functions in Different Hands.** Under the council-manager plan, the council controls the purse strings. Subject to controlling charter provisions, not a cent may be spent nor a penny collected without authorization by the council. At the same time the actual expenditure of money is a function of the manager and the administrative agencies under his control. The laymen in the council, unlike commissioners under the commission plan, do not spend the funds which they themselves have raised and earmarked for various purposes.

(10) **Council Free to Concentrate on Questions of Policy.** The council has a genuine opportunity to concentrate on broad questions of policy and to reach decisions with the best interests of the city in mind. It is aided in the discharge of this important function by the advice and information which its agent, the manager, provides. Having hired the manager and possessing effective means of controlling him, the council is likely to have confidence in his recommendations. The manager bears the burden of responsibility for the direction, control, and supervision of administration. Consequently, the council is free to devote its time and energy to the determination of policy. Moreover, councilmen have no connection with particular administrative departments and thus have no selfish reason for promoting one service at the expense of others. For this reason, among others, they

are likely to approach problems with the objective of taking action which will prove beneficial to the city as a whole.

**(11) Plan Promotes Development of City Management as a Profession.** By reason of the method of selecting the manager, the arrangement for indefinite tenure, and the common stipulation that the manager need not be a resident of the city at the time of appointment, the council-manager plan has the merit of promoting the placement of city management on a professional basis. Obviously, this effect of the plan depends on its adoption by a sufficiently large number of cities and on general abandonment of the traditional idea that local jobs are for local men.

**Claimed Disadvantages: (1) People Unable to Control Manager.** A standard argument against the plan is that an official as powerful and as important as the manager should be chosen directly by the voters rather than by the council. Indirect popular control through the council is considered a poor substitute for direct action by the voters. It is asserted that popular election of the chief executive has become an American tradition which should not be discarded without urgent reason.

**(2) Council not Subject to Effective Popular Control.** Although the members of the council are elected at regular intervals by the voters and usually are also subject to recall, the control of the voters over the council is said to be more theoretical than real because of the difficulty of holding a group of men to answer for their actions. It isn't by any means easy to determine which councilmen should be retired from office and which ones deserve re-election. This weakness is considered serious for two reasons. The council is the dominant organ of city government and the only organ over which the voters possess a direct control. Unfortunately, so it is asserted, that control is necessarily ineffective. Critics who advance this argument prefer the mayor-council, plan i. e., an organization of the separation of powers and check and balance type, with an elected executive to counterbalance the elective council.

**(3) Failure to Provide for Effective Political Leadership.** Political leadership is supposed to be the function of the council under the manager plan, but leadership by a group of men, if forthcoming at all, is far less likely to prove effective than leadership by a single person, e.g., the mayor under the strong-mayor plan. As a consequence, the need for political leadership is likely to be met by the manager who is supposed to remain politically neutral. In that event, the manager becomes a politician who should be elected rather than appointed to office.

The contention of supporters of the manager plan that the mayor should act as spokesman for the council and as political leader is derided as an example of wishful thinking which rarely is transformed from fancy into fact. Failure to provide for effective political leadership is considered a major shortcoming of the council-manager plan.

(4) **Too Much Authority Vested in the Council.** The council plays so dominant a rôle under the council-manager plan that the success or failure of the plan depends on the caliber of councilmen. Generally speaking, so it is asserted, councilmen are mediocrities who have little to contribute to the cause of good government. There is no reason to believe that councils under the manager plan will prove superior to the type of councils which people in the United States have been in the habit of electing. It is unwise, therefore, to vest so much authority in the council.

(5) **The Insolence of the Professional.** It is argued that the manager, as a professional rather than an amateur administrator, will become overbearing and arrogant, bully the council, disregard public opinion, and move too fast in whatever direction he is inclined to go, forgetting that he is supposed to be the servant of the people. Despite high-sounding theory to the contrary, professional insolence and authoritarian government will prove to be the actual contribution of the appointed expert in the field of municipal management. Opponents of the plan frequently advance this argument.

(6) **Limited Supply of Qualified Managers.** The manager plan presupposes the existence of an ample supply of capable and well-trained men. Actually, the supply is limited and the prospects for an increase as well as a continuous replenishment are decidedly poor. So runs the argument. Really able individuals eventually are drawn into private enterprise and cities are forced to select men who bear the brand of mediocrity. Under these circumstances all of the talk about expert administration means little in practice.

(7) **Miscellaneous.** Numerous other arguments against the manager plan have been advanced on one occasion or another. Most of them are pretty thin and many of them are simply appeals to emotion and prejudice. Unfortunately, they may prove quite effective when the chips are down in a campaign for adoption of the plan. Among these arguments are the claim that the manager plan creates a dictatorship of an irresponsible type; the assertion that the plan is un-American; and the contention that the council and manager will join hands in exploiting the public. It has even been argued that the plan represents an attempt on the part of capitalists to suppress the laboring classes. Finally, adoption of the plan has been said to result in extravagant government, increased tax rates, mounting debt, over-emphasis on public works, and disregard of the human side of government.

## CONCLUSION

The primary purpose of this chapter has been to present some of the details of the council-manager plan as it has developed in the United States. For the most part, emphasis has been placed on the formal arrangements established by charter or ordinance, with the objective of stressing the

basic structural features and also indicating the variations in organization which are encountered from city to city.

In the following chapter, consideration will be given to the way in which the plan has worked in practice since its birth in Staunton, Va., in 1908. Has it measured up to the expectations of its sponsors, or has it proved a failure as predicted by its opponents?

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<sup>12</sup> Other references are listed at the end of the succeeding chapter.



## CHAPTER XXI

### COUNCIL-MANAGER GOVERNMENT IN OPERATION

#### *Outline*

- The Type of Men Who Become Managers**
  - Educational Background
  - Previous Occupational Experiences
  - Age
  - Residence at Time of Appointment
  - General Characteristics of Managers
  - City Managers as Professional Men
- The Length of Service of Managers**
- Councils: Their Quality and Their Work**
  - Quality of Councils
  - Work of the Council
- Relations Between the Council, the Manager, and the Public**
  - Theory of the Council Manager Plan
  - Political as Distinguished from Civic Leadership
  - Conflicting Views Concerning Proper Relations Between the Manager and the Public
  - Relations in Practice
    - (1) Community-Governed Cities
    - (2) Machine-Ridden Cities
    - (3) Faction-Ridden Cities
  - Lessons of Experience
- The Mayor, the Council, and the Public**
- General Results of Council-Manager Government**
- Abandonments of the Council-Manger Plan**

FORTY YEARS of experience with council-manager government have resulted in the accumulation of a considerable quantity of information which casts light on the way in which the plan has worked in practice. Especially valuable are recent studies of the plan in operation in 50 cities which were carefully selected for the purpose of a nation-wide review of the significance, influence, and effect of council-manager government. This project was undertaken by the Committee on Public Administration of the Social Science Research Council in 1937 and the results have been published in book and pamphlet form.<sup>1</sup> These studies, together with reports on council-manager

<sup>1</sup> H. A. Stone, D. K. Price, and K. H. Stone, *City Manager Government in the United States* (Chicago, Public Administration Service, 1940); H. A. Stone, D. K. Price, and K. H. Stone, *City Manager Government in Nine Cities: Case Studies* (Chicago, Public Administration Service, 1940); F. C. Mosher and others, *City Manager Government in Seven Cities: Case Studies* (Chicago, Public Administration Service, 1940).

government in operation by various competent observers, furnish the student of government with creditable evidence of the merits and shortcomings of this type of government.

### THE TYPE OF MEN WHO BECOME MANAGERS

In the preceding chapter attention was called to the qualifications prescribed for the position of manager by charter provision. It was pointed out that these usually were broad and general enough to give the council great freedom in the selection of a manager. Consequently, the qualifications which a council considers desirable are more important than those established by law. An analysis of city managers with respect to education, experience, age, and residence at the time of appointment casts some light on the type of men whose services are sought.<sup>3</sup>

Before presenting the results of several studies along this line, consideration will be given to the qualities which two leading authorities in the field of city management believe a manager should possess. C. E. Ridley and O. F. Nolting, the director and the assistant director, respectively, of the International City Managers' Association, consider the following qualifications to be highly desirable, if not essential, for success as a city manager: (1) executive or administrative ability as shown by a capacity for planning and organizing, by experience in handling men, by interest in them, by a dynamic personality, and by a scientific bent of mind; (2) vision and initiative; (3) a constructive conception of the destiny of the American city; (4) a broad social conception of municipal government as a result of training, experience, and reflection; and (5) such personal attributes as honesty, forcefulness, tact, industriousness, a sense of humor, courage, and loyalty.<sup>4</sup>

The extent to which managers in general measure up to these qualifications is difficult to determine, and the following information about their education, experience, age, and personalities is enlightening with respect to but a few of the requirements listed above, and then only in an indirect way.

**Educational Background.** Of 547 managers who served throughout or at some time during the three-year period from 1931 to 1933 inclusive, 63% had attended college, 22% had graduated from high school, 9% had attended high school without finishing the course, 5% had completed only the grade school, and 1% reported themselves as "self-educated." Nearly two-thirds of those in the college group had received one or more degrees. About three-fourths of the degrees were in some branch of engineering.

Of the 152 managers who served in 48 of the cities covered in the study undertaken by the Committee on Public Administration of the Social Science

<sup>3</sup> The information presented in this chapter with respect to the education, previous occupational experience, age, residence at the time of appointment, and the personalities of managers; their length of service, and separations from the service was obtained from the following sources: successive numbers of the *Municipal Year Book* (1934-1948); C. E. Ridley and O. F. Nolting, *The City Manager Profession* (Chicago, University of Chicago Press, 1934); L. D. White, *The City Manager* (Chicago, University of Chicago Press, 1927); H. A. Stone, D. K. Price, K. H. Stone, *City Manager Government in the United States*, (Chicago, Public Administration Service, 1940).

<sup>4</sup> *Op. cit.*, pp. 41-42.

Research Council for the period from 1908 to 1939, 77% had attended college and the remainder, with the possible exception of four whose education was unknown, had not. The college group included 112 who had obtained degrees (96 in engineering) and five who failed to complete their college training. Most of the engineers were graduated in the field of civil engineering.

Of 560 managers who were in service at the end of 1946 and whose education was known, 48% had attained college and received degrees, while 29% had spent some time in college or taken extension courses. Engineering degrees were held by a substantial majority of the college graduates.

The higher percentage of college men among the 152 managers who served the 48 cities than among the 547 serving from 1931 to 1933 and the 560 in service at the end of 1946 probably is attributable to the fact that most of the cities covered by the investigators were fairly large in size. Forty-two of them had a population of 10,000 or over and 28 had more than 25,000 inhabitants.

The lower percentages are for a much larger number of managers in service in numerous small as well as large communities. Men without a college background are more likely to be found in small places with relatively simple governmental problems.

The conclusion may be drawn that on the whole city managers are reasonably well-educated as far as formal education is concerned. All but a small percentage are high school graduates, about three out of four have attended college, and nearly half hold college degrees. Many managers in service take correspondence and extension courses and some continue to study at institutions of higher learning. The fact that most of the college-trained managers studied engineering indicates either a preference for engineers on the part of councils or a greater preference for city management among engineers than among persons with training in other fields. It should be noted that few managers selected their college curriculum with the intention of entering the profession in which they eventually became engaged.

**Previous Occupational Experiences.** The previous occupational experiences of managers will be considered from two points of view, viz., the character of their occupations and the nature of the enterprises, whether public or private, with which they were connected prior to becoming managers. Since many men may have pursued various occupations at one time or another before appointment as managers, the placement of an individual in a given category is determined by his predominant previous occupation.

In regard to the public or private character of previous service, the statistics published in successive numbers of the *Municipal Year Book* are for the managerial appointments made during each calendar year, with the result that a manager appointed by a given city who was serving as manager of another city at the time of appointment is included in the category of those men whose prior service was public rather than private. The available information includes appointments of men who were managers at the time of appointment or had at one time served as managers.

The types of previous experience of men who have become managers are numerous and varied. Some idea of the variety of the prior experiences of managers may be gained by listing some of the positions which they held before entering the managerial profession. The list includes business managers or executives, merchants, bankers, automobile salesmen, lawyers, teachers, publishers, real estate and insurance agents, city clerks, city treasurers, finance directors, highway engineers, managers of public utilities, assessors, city engineers, health officers, purchasing agents, doctors of medicine, and many others.

More significant than information of this type is the general character of the predominant occupations of the men who became managers. The leading occupation is engineering in one field or another, with some phase of civil engineering the most common. Next in line is business activity of an executive character, perhaps as banker, store manager, or corporate executive.

An analysis of previous connections of city managers shows that a very substantial proportion were either in public service at the time of appointment or had held public or governmental posts at one time or another. For the years from 1930 to 1947 inclusive, the percentage of appointees each year who formerly had held governmental positions ranged from 78.9% in 1940 to 51.7% in 1933. The average percentage for the 18-year period was 68.5%. Thus about seven out of ten appointees were men who, on one occasion or another, had served the public in some capacity, usually in the field of county or city government and occasionally at the state and federal levels.

During this 18-year period, the total number of managers promoted from one city to another was 247 and the number of former managers among the appointees was 250. The combined total of promoted managers and former managers was 497 out of a total of 1933 appointees, i.e., 25.7%. From 1908, the year in which the council-manager plan obtained its first foothold, to 1947, 418 managers moved directly from one city to another.

The figures presented in the preceding paragraphs indicate that most managers are by no means novices as far as governmental service is concerned. Whether this fact is evidence of council preference for such men or evidence that men with public service experience are most likely to seek managerial posts is difficult to say.

**Age.** Age studies of managers are interesting even though the question of age is one of secondary significance in determining qualification for service. Since managers lead a strenuous and hazardous life, mental and physical vigor is required, and consequently city management is an inappropriate profession for men far above their prime. Nor are extremely young adults likely to have had the experience which is needed for managerial work. It is scarcely surprising, therefore, to find that about 90% of the managers are between 30 and 60 years of age at the time of appointment and that

more than half are from 30 to 45 years old when first appointed. Relatively few are under 30 or over 60.

**Residence at the Time of Appointment.** The statistics concerning the residence of managers at the time of appointment are particularly interesting because of the provision in most charters that the manager need not be a resident at the time of selection. For the period from 1930 to 1947 inclusive, the proportion of non-resident appointees ranged from a high of 71.3% in 1947 to a low of 17% in 1933, with an average of 37.9%. In the earlier years of the plan, the proportion of non-resident appointees was fairly high. From 1912 to 1926 it was 46%. Thereafter, as evidenced by an average of 32.6% non-resident appointees for the period from 1930 to 1944 inclusive, a trend away from the appointment of non-residents developed.

Since 1944 the situation has changed. The proportion of non-resident selections for the short period from 1945 to 1947 inclusive reached the high average of 64.6%. Friends of the manager plan hope that the present preference for non-resident appointees will continue because any marked tendency to select local men reduces the opportunity for the promotion and transfer of managers from one city to another, hinders the growth of the managerial profession, and discourages competent men from pursuing a managerial career.

The first manager chosen by a city is much more likely to be an out-of-town man than the second or subsequent appointees. From 1929 to and including 1946, 55% of the original appointees in the 334 cities and counties in which the plan became effective were non-residents as compared to 37% of all of the appointments which were made during the same period. The apparent reasons for the tendency to select local men after the first appointment are political, economic, and psychological in character.

In cities which adopt the plan after a bitter political struggle, the first manager usually is the target upon which the opposition concentrates its fire, and if this manager be an out-of-town man, one of the demands of the opposition is that he be replaced by a local resident. Another factor in the shift to local men after the first appointment is the feeling that after the outside expert has done the ground work of getting the plan off to a good start, a local resident can carry on satisfactorily. The declining percentage of outside selections for successive appointments after the first may be due in large measure to this point of view.

Economic considerations also enter the picture. The services of local men often can be obtained for a lower salary than desired by the outsider, and economy-minded groups are usually inclined to think of a reduction in compensation as a constructive measure of economy. This angle of the matter probably accounted for the marked trend toward the selection of local men from 1930 to 1944. The economic depression of the 30's and the financial burden of war gave rise to a strong demand for reduced govern-

mental expenses. Man-power problems during the war also may have had a bearing on the situation in the early 40's.

Finally, non-resident appointments run counter to the traditional idea that home-town boys should be given home-town jobs, especially in the governmental field. This idea may be overcome temporarily in the first enthusiasm generated with the adoption of the manager plan, but traditional beliefs are difficult to uproot and are likely to regain much of their former strength.

**General Characteristics of Managers.** The information so far presented has limited significance in regard to the broad question of the general character of the men who become managers. An answer to this question is given by the investigators of the above-mentioned 48 cities. Although these cities had employed only 152 managers of the total of 2703 who had been employed by all cities by the end of 1947, the conclusions of the investigators probably hold true for the entire group. There is, at least, no evidence to the contrary.

As might be expected, the personalities of the managers varied greatly and there was no typical manager. However, certain common characteristics were noted. These attributes were: competence as administrators, a professional attitude, a serious bent of mind, great enthusiasm for their work, honesty, directness in action, and ability to make and stand by decisions. For the most part, the managers were "well-educated, practical men, experienced in some phase of public or private administration." Untrained, incompetent, unprofessional, and inexperienced managers were exceptional.

Most of the managers strove to raise standards of performance and to place municipal service on a high level of technical proficiency in order to give economical service. They spent much of their time in the practical day-to-day job of supervising all city services and they were particularly interested in planning and building public works projects.

They often were criticized as lacking breadth of community vision, for failing to develop new services, and for a lack of appreciation of the human side of government. Nevertheless, the investigators found them far less deserving of criticism along these lines than their predecessors under other plans of government and concluded that they were frequently "ahead of their communities and their councils in these aspects."

**City Managers As Professional Men.** Although city management is not a profession in the sense that law and medicine are, city managers consider themselves professional men. Their claim to professional status is supported by their attitude and their conduct as a group; by the fact that they have formed an association, the International City Managers' Association, with established standards for membership; by their adoption of a code of ethics; and by their united efforts to organize and to extend the knowledge required for the discharge of their responsibilities as public administrators. The individual attributes of a professional man, such as activity characterized by high individual responsibility, a social service

motive, a devotion to high standards of achievement, and loyalty to professional standards and ideals, are exhibited by a substantial proportion of managers. Unlike professions in the narrower sense, however, admission to membership is not based on a standardized training or upon examination. Nor is the practice of city management the exclusive legal right of an organized group of men.

The International City Managers' Association, which was originally called The City Managers' Association,<sup>4</sup> was organized in 1914.

Eligibility to membership is based on the following requirements:

Any person who is the administrative head of a municipality appointed by its legislative body; who has served in that capacity for at least three years and whose professional conduct conforms to the code of ethics of this Association shall be eligible to this membership. Graduation from a college or university of recognized standing, or five years in a responsible public administrative position shall be considered as equivalent to one year of active practice.<sup>5</sup>

Provision also is made for various other grades of membership, i.e., associate, affiliate, student, sustaining and honorary. About three-fourths of the city managers now in service belong to the Association.

The activities of the Association are determined by its stated purpose, which is "to increase the proficiency of city managers and aid in the improvement of municipal administration in general."<sup>6</sup>

Its publications include an official monthly journal, *Public Management*, which contains articles, editorials, and notes concerning problems of public administration; *The Municipal Year Book*, issued annually, which is an invaluable source of information in regard to American local government in general; *The City Managers' News Letter*, published twice a month; *Recent Publications on Municipal Administration*, issued monthly; a great variety of special publications, such as *How to Reduce Municipal Expenditures* (1933); *A Guide for Preparing Public Works Reports* (1933); *Measuring Municipal Activities*, rev. ed. (1943); and *Planning for Postwar Municipal Services* (1945).

The Association has prepared extension courses in the various fields of municipal administration. Since 1934 it has maintained an Institute for Training in Municipal Administration through which it has undertaken a broad program of in-service training for city officials on the administrative level.

Another important activity of the Association is research work in regard to various municipal problems under the guidance of a research staff. Various committees appointed by the Association investigate and report on a variety of matters and cooperate with other associations which are concerned with different phases of municipal government and administration. The Association holds an annual conference which is well attended by city managers and other persons interested in municipal problems. It main-

<sup>4</sup> The title was changed in 1924.

<sup>5</sup> *Constitution and By-Laws of the International City Managers' Association*, Art. VII, Sec. 2.

<sup>6</sup> *Ibid.*, Art. I.

tains a full-time secretariat which, since 1929, has been established on the campus of the University of Chicago.

A code of ethics was adopted by the Association in 1924. This code, as revised in 1938, is as follows:

1. No member of the profession seeks or accepts a position as city-manager unless he is fully in accord with the principles of council-manager government and unless he is confident that he is qualified to serve under these principles as city manager to the advantage of the community.

2. The city manager has a firm belief in the dignity and worth of the services rendered by government and a deep sense of his own social responsibility as a trusted public servant.

3. The city manager is governed by the highest ideals of honor and integrity in all his public and personal relationship, in order that he may merit the respect and inspire the confidence of the administrative organization which he directs and of the public which he serves.

4. The city manager believes that personal aggrandizement or personal profit secured by confidential information or by misuse of public time is dishonest.

5. The city manager is in no sense a political leader. In order that policy be intelligent and effective, he provides the council with information and advice, but he encourages positive decisions on policy by the council instead of passive acceptance of his recommendations.

6. The city manager realizes that it is the council, the elected representatives of the people, which is entitled to the credit for the fulfillment of municipal policies and leaves to the council the defense of policies which may be criticized.

7. The city manager keeps the community informed on municipal affairs but keeps himself in the background by emphasizing the importance of the facts.

8. The city manager, in order to preserve his integrity as a professional administrator, resists any encroachment on his control of personnel, insists on the exercise of his own judgment in accomplishing council policies, and deals frankly with the council as a unit rather than secretly with its individual members.

9. The city manager handles all matters of personnel on the basis of merit. Political, religious, and racial considerations carry no weight in appointments, salary increases, promotions, and discipline in the municipal service.

10. The city manager curries no personal favors. He is the administrator for all the people and handles each administrative problem without discrimination on the basis of principle and justice.

This code of ethics sets a high standard of conduct for city managers. Conformity thereto is one of the requirements for membership in the Association. A committee on professional conduct has been set up to consider and investigate complaints and to call the attention of the secretariat to infractions of the code. By and large, managers seem to have lived up to this code as faithfully as have the members of other professions with established standards of conduct.

#### THE LENGTH OF SERVICE OF MANAGERS

By far the great majority of charters establishing the council-manager form of government provide indefinite tenure for the manager. He serves at the pleasure of the appointing authority, *i.e.*, the council. What this provision has meant in practice is revealed by statistics concerning length of service which have been gathered year by year.



The average length of service of active managers was 1 year, 7 months in 1915; 2 years, 1 month in 1920; 3 years, 4 months in 1925; 4 years, 11 months in 1930; 6 years, 2 months in 1935; 7 years, 8 months in 1940; 7 years, 10 months in 1945; and 7 years, 4 months in 1946. A maximum average of 7 years and 11 months was reported for 1939. The large number of adoptions of the council-manager plan in the last few years will bring about a decrease in the average length of service.

Of the 662 managers in office at the end of 1946, 53% had completed less than 5 years of service, including all cities served; 16.9% from 5 to 9 years; 12.1% from 10 to 14 years; 9.1% from 15 to 19 years; 6.8% from 20 to 24 years; and 2.1% more than 25 years. Among the incumbent managers in 1947, the longest period of service in a single city is the 31-year tenure of H. L. Woolhiser in Winnetka, Ill. (12,403). Next in line are L. J. Houston, Fredericksburg, Va. (10,066) and C. Arrasmith, Fillmore, Cal. (3,252), 30 years; V. J. Hultquist, Alcoa, Tenn. (5,131), 29 years; H. A. Sherman, Sault Ste. Marie, Mich. (15,847), 28 years; and J. C. Hiteshew, Sewickley, Pa. (5,164), 27 years.

Separations from the service occur every year for a variety of reasons. These include death, resignation from the position in one city to accept appointment in another, resignation to accept some other public post or some position in private enterprise, retirement, and discharge for one reason or another.<sup>7</sup> The number of separations from the service fluctuates from year to year, but the average per year since 1930 has been 75, with a high of 129 and a low of 50.

### COUNCILS: THEIR QUALITY AND THEIR WORK

**Quality of Councils.** An appraisal of the councils which have been elected under the manager plan presents difficulties because of the lack of precise standards of evaluation and because of the limited information available. To a lesser degree, these same difficulties are encountered in the appraisal of managers. However, reports of various observers and investigators provide evidence in support of certain generalizations.

Usually, the first councils chosen after adoption of the manager plan are markedly superior in quality to those which preceded them under other forms of government. The explanation lies in the enthusiasm for the new government on the part of its sponsors and their supporters. Outstanding men are persuaded to run for office and a vigorous campaign usually is conducted for their election, especially if a citizens' association is formed for the purpose.

Subsequent councils ordinarily fail to measure up to the high quality of the first one. But the consensus among observers is that the caliber of the later councils nevertheless remains superior to that of those chosen before

<sup>7</sup> Some cities have political traditions and practices which conflict with the principles of the plan. Dismissals often occur in communities in which the political revolution which brought about adoption of the plan is followed by a political reaction. The manager and his administration become or remain political issues.

adoption of the plan. To be sure, there are exceptions. Much depends on local political traditions and conditions, on the circumstances leading to the establishment of council-manager government, and on the extent to which a sustained interest in good government prevails throughout a community. Indifference on the part of the general public is reflected sooner or later in the composition of the council.

In theory, a combination of factors should promote the choice of satisfactory councils under the manager plan. This combination is: (1) at-large election; (2) non-partisan ballots<sup>8</sup>; (3) the greater prestige of serving on a body which possesses extensive powers and responsibilities; and (4) the fact that the work of the council is of such a character that laymen are qualified to undertake it.

In practice, these factors probably have contributed to the improved quality of councils. Of greater importance, however, has been the civic awakening which accompanies adoption of the plan in many cities and survives in varying degrees in subsequent years.

**Work of Council.** The effects of the manager plan on the work of the council in the cities investigated by the Committee on Public Administration of the Social Science Research Council are in all likelihood indicative of the developments which take place in most manager cities.<sup>9</sup> However, as the investigators point out, "there is no 'Middletown' in American politics, no city that can be cited as typical of the political systems and habits of the country as a whole."<sup>10</sup>

In general, the councils of these cities found more time to devote to the broader and more significant questions of municipal policy than had previously been the case and manifested greater interest than formerly in doing so.<sup>11</sup> The concentration of administrative authority in the manager relieved them of a number of tasks. They no longer were obliged to appoint officers and employees<sup>12</sup> and to engage in administration in a directive and supervisory capacity on the administrative front in "the office, the shop, or the field."<sup>13</sup> The making of appointments and the direction and supervision of administration were in most cities recognized to be the manager's function in practice as well as in theory. In the main, the councils dealt with administration through the manager. However, the mass of detail requiring council action, much of which was administrative in nature or pertained to administration, remained about the same because of the requirements of state laws and charters. Councils still were required to do such things

<sup>8</sup> Most council-manager charters provide for election at large on a non-partisan basis.

<sup>9</sup> H. A. Stone, D. K. Price, K. H. Stone, *op. cit.*, especially Chapter 8.

<sup>10</sup> *Ibid.*, p. 185.

<sup>11</sup> In comparing the work of a council after and before adoption of the manager plan, the previous type of city government should be taken into consideration. Under the commission plan the powers and duties of the council differ from its role under the mayor-council system. Whether one or the other of these forms preceded adoption of the council-manager plan in the investigated cities, the general effect of the shift seems to have been much the same. Differences in degree rather than in kind occurred.

<sup>12</sup> Except in so far as the charter required certain appointments to be made or approved by the council, or unless a council, contrary to the principles of the plan, chose to trespass on or interfere with the selective process.

<sup>13</sup> Councils no longer bought supplies, wrestled with technical problems of administration, or took direct charge of the work of department heads or subordinates.

as approve the payment of bills, transfer funds, authorize refunds of taxes, and approve contracts. Even so, action of this type was expedited by the aid and advice which the manager was able to give.

Councils tended to consider problems from an over-all or city-wide point of view and in a more unbiased manner. They weighed and acted upon proposals which for the most part were presented and reported on by the manager rather than by one of their own number. Individual councilmen had little or no *personal* interest in or connection with particular propositions. As a result they were more likely to consider each proposal in an impartial manner with the interests of the public in mind. The manager was concerned with city government as a whole and not merely with some part thereof. He was in a position to provide information about the effects of a proposed action on all phases of the government and to give advice and make recommendations with the total picture in mind. This fact helped to promote an over-all point of view on the part of the council. Other contributing factors were the council's freedom from employment problems and from the responsibility of administrative supervision, and, in most cities, the non-partisan election at large of councilmen.

Councils had more time for and assumed greater responsibility for legislative leadership and public relations activities, i.e., for sponsoring desirable policies and for explaining and defending the work of the city government to the public. Under the council-manager plan, ultimate and complete responsibility for the quality of city government rests with the council. Upon the extent to which this fact is realized by both councilmen and the public depends the degree of council activity along lines of legislative leadership and public relations work. In the investigated cities, the councilmen, or at least many of them, tried to live up to their responsibility by convincing the public of the merit of certain policies, when necessary, and by assuming much of the burden of explaining the work of the government to citizens and of defending it against attack. Frequently, the mayor, as official head of the city and presiding officer of the council, was the real leader among the councilmen in this sort of activity, for which more time was available because the council was no longer occupied to so great an extent as formerly with administrative work. However, in some cities the council did little or nothing worthy of mention in regard to legislative leadership and public relations activity.

The changes in the work of the council which have just been summarized usually failed to bring about a reduction in the amount of work or time involved in service on the council. Most councilmen found that they had to do far more than attend an occasional council meeting. A council which lives up to its responsibilities under the manager plan has plenty of work to do, and individual councilmen are very likely to experience additional demands on their time by being called upon to serve on advisory and public relations boards of one type or another.

What has been said about the effect of the manager plan on the work of councils in the investigated cities held true in general, but not without

exceptions. Some councils interfered with appointments, continued to engage directly in administrative matters, or checked and reviewed even insignificant details of administrative action and procedure. Others played an extremely passive rôle, left almost everything to the manager, and did little more than meet occasionally to rubber-stamp the recommendations of the manager. Some assumed the responsibility of legislative leadership and public relations work in a thoroughgoing way; others evaded or tried to evade this responsibility. From city to city and from time to time in particular cities practice varied in some degree, but in the main the work of councils was affected in the manner described in preceding paragraphs.

One of the most important responsibilities of the council is the selection of a manager. Councils have gone about this task in different ways. In the earlier years of the manager movement, advertising in newspapers and professional journals was fairly common, but this practice is on the decline. Suggestions are frequently sought from various organizations in the field of public administration, from departments of political science of universities, and from managers of other cities. Applications are almost always received from interested parties who hear about a vacancy. Many councils set up a committee to search for a man either among city employees or elsewhere.

In the investigated cities, each council developed its own technique in obtaining information about the qualifications of possible appointees, in weighing the relative merits of different men, and in making a final choice. Most of them endeavored to choose a man without paying heed to political considerations. Few of them succumbed to political pressures. Only a small minority intentionally selected unqualified persons or made appointments which were frankly political in nature.

#### RELATIONS BETWEEN THE COUNCIL, THE MANAGER, AND THE PUBLIC

**Theory of the Council-Manager Plan.** The character of the relationship between the council and the manager is a matter of basic importance in the operation of the plan. In principle, the direction, control, and supervision of administration is the immediate responsibility of the manager. He acts as the responsible agent or servant of the council in administering the policies which it has adopted. The ultimate responsibility of the council for administration as well as for policy determination is evidenced by its power to select the manager and to dismiss him at any time that it becomes dissatisfied with the work he is doing. As an expert in charge of administration, the manager is expected to give valuable aid and advice to the council in connection with the formulation of policy, but the authority to adopt policies is vested solely in the latter. Although the council may deal with administrative matters by ordinance, by resolution, or by instructions to the manager, councilmen are supposed to refrain from engaging in administrative work, either individually or collectively, and are expected to leave administration to the manager and his department heads and subordinates.

In the matter of public relations, the council, as an elective body in which

all powers of the city government are unified, is charged with heavy responsibilities. It is politically responsible to the voters for whatever the government does, whether in the field of policy-determination or administration. Consequently, it should provide needed political leadership and undertake the task of selling, explaining, and defending the city's program of activities to the public. It should receive credit for the successes and assume blame for the failures of government under the manager plan.

As for the relations of the manager with the public, one point is clear in theory if not in practice, viz., the manager bears no political responsibility to the voters. He is subject to continuous control by the council, but is accountable to the voters only indirectly through their representatives. Unquestionably, inasmuch as the manager lacks policy-determining authority, this feature of the plan is sound.

The manager, as chief administrator of municipal services, necessarily comes into contact with the public in many ways. He listens to the complaints of citizens, furnishes the public with information about city affairs, holds conferences with newspaper reporters, and participates in various other ways in the life of the urban community. His official position, his knowledge about the problems of the city, and his qualifications as a municipal expert provide him with an excellent opportunity to supply the type of leadership which is needed to direct the efforts of the people toward achievement of a better civic life.

The question of whether or not the manager should take advantage of this opportunity is highly controversial. Concern over the effects of managerial leadership on the operation of the council-manager plan accounts for the division of opinion on this point.

**Political as Distinguished From Civic Leadership.** An understanding of the controversial aspects of the leadership problem depends on comprehension of the distinction between political leadership and community or civic leadership. The former involves direct participation in the processes of politics. A political leader plays an active part in the formulation of campaign issues, in the advocacy of a program of governmental activity with the intention of influencing the outcome of elections, in the nomination of candidates and the conduct of election campaigns, and in the development of effective political organization for the purpose of gaining and retaining control of the government. Political leadership signifies partisan activity in its various phases as directed toward the objective of getting into office for the purpose of determining what the government shall do and how it shall do it.

Civic or community leadership is characterized by activities which are distinguishable from those associated with political leadership, primarily because of a different motivation. Civic leaders take the initiative in calling attention to community problems, in suggesting and advocating solutions, in developing public opinion for or against various proposals, and in trying to stimulate community action along favored lines. But they carry on activities of this nature without the definite aim of winning control of the government as the principal means of achieving their objectives.

It is difficult to draw a precise line of demarcation between the two types of leadership because they resemble each other in various respects and tend to merge at some points. In fact, political leadership may be looked upon as a special variety of community leadership. The two are often, but not necessarily, intimately related. A leader among politicians may be a community as well as a political leader. On the other hand, the editor of a newspaper, a minister, the president of the local chamber of commerce, the head of a labor union, or a prominent business man may be a powerful community leader without being a political leader in the sense in which political leadership has been defined above.

**Conflicting Views Concerning Proper Relations Between the Manager and the Public.** The question of the proper relations between the manager and the public has been the subject of spirited discussion among managers, political scientists, and other persons interested in the council-manager plan of government. It is generally agreed that the manager should not attempt to become a political leader, participate in campaigns for the election of councilmen, engage in party activity or take sides in political controversies. The code of ethics of the managers stipulates that no manager should take an active part in politics. At this point agreement ends and controversy begins. Two basic schools of thought have developed in regard to the proper relations between the manager and the public.

A point of view to which many managers with considerable experience adhere is that the manager should strive to be as inconspicuous as possible and refrain from pushing himself into the rôle of leader in civic affairs. The manager, as the expert administrative servant of the council, should conduct himself publicly in such a way as to acquire a reputation for neutrality with respect to local controversies. Of course, one of his duties is to make recommendations to the council. It is proper, moreover, for him to make his opinions as an expert on municipal affairs known to the public. However, he should avoid active participation in drives to win public backing for policies prior to their adoption. Once a policy has been adopted by the council he may help "sell" it to the public. At no time should he attack the opposition inside or outside the council or try to dominate the council by appealing to the people for their support.

According to the foregoing point of view, civic and political leadership is the function of the mayor and the council. The manager should develop the reputation of being willing at all times to do whatever the council and the people want him to do. Such speech-making as he does should be confined to the purpose of explaining the work of the city government and of presenting his views as an unbiased expert. Only in this way can the manager avoid becoming a political issue.

The opposition school of thought, to which newcomers to the managerial profession usually subscribe, favors aggressive civic leadership by the manager if necessary. This attitude is attributable to the conviction that the mission of the manager, as an expert on municipal affairs, is to win as

many supporters as possible for the cause of good government and to do whatever can be done to direct community effort into the proper channels.

It is the manager's duty to become a community leader, to initiate new policies for community betterment, to work openly for their adoption, and to bear the brunt of the criticism which opponents direct against the council majority for following the manager's leadership. If the opposition proves too strong and political pressure becomes too great, the manager can resign or await inevitable dismissal once the opposing forces gain control of the council. Whatever his fate, he will have "seen his duty and done it." Aggressive civic leadership by the manager, according to this school of thought, is consistent with the rule in the managerial code of ethics which states that the manager should not take an active part in politics.

**Relations in Practice.** The relations between the manager, the council, and the public vary considerably in practice from city to city, and from time to time in particular cities. In some communities the manager is a fairly inconspicuous administrator who is recognized to be the politically neutral servant of the council. The latter assumes full responsibility for legislative and community leadership and refrains from interfering with the administration of municipal services. There are other cities in which the manager is constantly in the limelight as the vigorous leader of the city government and the community in the field of policy as well as in administration. In still other communities the council not only initiates and decides questions of policy, but interferes to so great an extent in administration that the manager is more of a nominal than an actual chief administrator.

The situation first described is one in which the council and the manager recognize and conform to their respective rôles under the theory of the manager plan; the second situation is characterized by managerial encroachment on a field of activity which in principle belongs to the council; and the third is marked by councilmanic invasion of the functional sphere which supposedly is reserved for the manager. In a number of instances, the relations between the manager, the council, and the public fall somewhere in between the three relationship patterns just described. Transition from one type of situation to another in a given city is a fairly common occurrence.

The way in which the relationship pattern works out in a given city depends on a number of factors. Among them are local political traditions and conditions; the circumstances leading to the adoption of the council-manager plan; the extent to which the public, the manager, and the council comprehend the plan's controlling principles; and the personalities and ambitions of manager, mayor, and councilmen. Charter provisions have some bearing on these relationships, but for the most part extra-legal forces prove to be far greater in significance.

A summary of the findings of the investigators of the fifty cities, which have been referred to so often in this chapter, is presented in the paragraphs which follow.<sup>14</sup> Developments in these cities constitute evidence of the re-

<sup>14</sup> H. A. Stone, D. K. Price, K. H. Stone, *op. cit.*, Chapters 3, 9-12.

sults which may be expected in other communities under similar conditions.

The cities were classified into three groups according to the character of the political traditions which prevailed before adoption of the plan and the type of political practices which the plan was expected to correct. These groups were: (1) community-governed cities in which politics had been minor in importance and in which the plan was established with the primary aim of improving the standards of administration; (2) machine-ridden cities in which the plan was adopted as a means of eliminating machine influences and practices; (3) faction-ridden cities which installed the plan to raise the quality and ideals of political leadership.<sup>15</sup> The effect of the plan on the council and on the relations between the council and the manager depended in large measure upon the group to which a given city belonged.

**(1) Community-Governed Cities.** In these cities the council-manager plan was adopted for the purpose of improving the methods of rendering municipal services. The quality of the council was high prior to adoption and remained so afterward. Generally speaking, the relationship between the council and the manager conformed rather closely to theory.

The council placed great emphasis on broad policies, discharged its responsibilities in the matter of leadership,<sup>16</sup> and left administration and administrative details to the manager. This official acquired the status of a non-partisan, permanent officer who remained neutral in political campaigns. In some cities, the manager became an active leader in community affairs and in promoting municipal policies, whereas in others the contrary was true, but in neither case did he ever become a political issue. A close working-relationship existed between the council and the manager. Both looked upon this relationship as something that was their own business and that was to be developed in a mutually satisfactory manner. "The real basis of the relationship between manager and council was a political tradition."

**(2) Machine-Ridden Cities.** In this category of cities, establishment of the council-manager plan was the result of a movement led by previously inactive and politically-inexperienced community leaders to terminate the reign of the machine and to end the systematic practice of spoils politics. The forces for good government usually organized a citizens' association to obtain support for the plan and to bring about the election of prominent and friendly citizens to the council. After gaining control of the council, the proponents of the plan obtained the services of an able and well-paid manager. They supported him in his efforts to improve the policies of the city government and to substitute impartial for partisan administrative practices.

The manager overshadowed the council in importance, partly because of his aggressive leadership and partly because of the attitude of the public, the passive council, and the opponents of the plan. He soon became the

<sup>15</sup> *Ibid.*, pp. 32-49.

<sup>16</sup> In these cities the civic leaders were at the same time the political leaders.



target of political attacks, especially because of his prominence and the growing resentment against impartial administration. Eventually he was forced out of office in a political reaction which enabled the opposition forces to win control of the council. The original community leaders who sponsored the manager movement withdrew from or were forced out of the political picture.

As a result, operation of the manager plan underwent considerable modification. The administrative authority, influence, and prestige of the manager were curtailed; the manager was forced to make concessions to the special interests of councilmen in administrative matters; and a compromise between the ideals of the manager plan and local political habits eventually contributed in some measure to security of tenure for the manager by making him less of a political issue.

In spite of these developments, permanent improvements were achieved in these machine-ridden cities. The council was composed of men of greater prestige and more ability than the councilmen who had served before adoption of the plan. Machine influence was weakened and spoils practices were curtailed in some degree. More attention was paid to general objectives in the field of city government.

In some cities the machine regained control of the government and compelled managers to cooperate in patronage practices, e.g., Rochester, but in most places the community leaders lost out to an opposition which was not identified with the machine, e.g., Dayton. The machine won control of the first council in a few communities and never was displaced. An example is Cleveland. Cincinnati affords an illustration of a previously machine-ridden city in which the citizens' association (City Charter Committee) was able to retain control over the council for an extended period of time.

**(3) Faction-Ridden Cities.** These cities had an experience with the manager plan similar in some, but not all, respects to that of the machine-ridden group. In most instances, they previously had sought political reform by substituting the commission plan for some variety of mayor-council government. They became dissatisfied with the results and turned to council-manager government in the hope of realizing their objectives. These aims were the replacement of numerous bickering factions, spoils practices, and favoritism of the petty, personal type by a more constructive leadership devoted to broader and long-range programs of municipal government.

Non-partisan citizens' associations brought about adoption of the plan, elected the first councilmen, and actively supported the manager who in most instances played an important rôle as leader in the promotion of new policies. The council, too, provided civic leadership and usually gave the manager a free hand in administration.

Eventually, a political reaction occurred. It was less violent than in the machine-ridden cities and was not based to so great an extent on opposition to the principles of the manager plan. Personalities and appearances proved more productive of political controversy than principles.

The reaction failed to dislodge the citizens' associations in about half of these cities. It succeeded in the others, but nevertheless municipal affairs continued to be conducted in such a way as to satisfy, or nearly satisfy, the proponents of manager government. The authority and influence of the manager were not restricted to so great an extent in these cities as in the machine-ridden group. Positive gains included improvement in the quality of the council, increased attention on the part of the council and the public to important objectives of municipal government, and a decrease in petty and personal favoritism.

**Lessons of Experience.** Experience with the council-manager plan indicates that it proves most successful in communities which understand and accept the basic principles on which it is based. In cities with a community-minded population desirous of obtaining good governmental service, the council is very likely to be composed of community leaders who are willing and able to undertake the task of political leadership. Moreover, the voters usually are aware of the complete responsibility of the council for the way in which the city government functions, and the manager is generally understood to be a politically neutral official with only delegated powers.

In communities which misunderstand the plan, in those which refuse to abide by its controlling principles, and in those which dislike its objectives, the plan itself and the manager in particular become political issues which cause bitter conflict. The causes of this situation are various.

For one thing, in the course of the campaign for adoption of the plan, the leaders of the reform movement are very likely to over-emphasize the rôle of the manager as compared to that of the council. False impressions often are created by referring to powers granted the manager in the charter and by calling attention to charter provisions prohibiting council interference with the exercise of these powers. The council is pictured as a passive body with little more to do than select the manager, give formal approval to his recommendations, and keep an eye on what he does. Since opponents of the plan usually raise the cry of "one man government," the foregoing type of sales talk helps to create widespread misunderstanding of the proper relationship between the council, the public, and the manager. It produces the impression that political responsibility is divided between the council and the manager instead of being placed solely on the council. An inevitable result is that councilmanic elections are looked upon as an indirect way of voting for or against the manager. He is wrongly considered to be the main-spring of the government. Other and equally serious consequences are: loss of prestige by the council, failure of the council to assume the responsibilities of leadership, and the mixing of administration and politics.

Another cause of opposition to the plan and the manager is the resentment aroused by an unbiased administration of municipal services. Systematic spoils politicians and independent political leaders who have used governmental powers to further their political ambitions and for purposes of personal gain, pecuniary or otherwise, naturally fight against new arrange-

ments which run counter to their selfish interests. Nor is dislike of impartial administration confined to this group and their followers. Frequently, the people in general, including those who sponsor the manager plan as a means of breaking the power of bosses and petty politicians, seek special privileges and favors from the city government and become resentful when these are denied. In short, impartial administration conflicts with a community tradition which supports the dispensation of special privileges through governmental agencies.

Again, the plan and the manager sometimes become political issues because a given manager proves over-aggressive, plays politics, strives to bully and dominate the council, and conducts himself in general as if he were an elective official. Occasionally a manager is forced to play this rôle against his will because of the expectations of the public and the council or because of the political situation which prevails in a given community. Whether willingly or unwillingly, the manager who serves as political leader as well as chief administrator soon finds himself in political hot water.

Sometimes, dissatisfaction with the manager and the plan is attributable to the fact that the council and the manager have moved too fast for the public in developing and executing a program of municipal services. The proper remedy for this situation is the election of a council which will put on the brakes, but now and then the plan and/or the manager, rather than the council, are condemned for what has happened. Retention of the plan or the manager then becomes a political issue.

#### THE MAYOR, THE COUNCIL, AND THE PUBLIC

Much has been said in preceding paragraphs about the necessity for assumption of the function of political leadership by the council if the manager and administration are to be kept out of politics and if the manager is to serve effectively in his proper sphere of activity. Many councils have fulfilled this responsibility satisfactorily, but the fact that the council is a collective body complicates the achievement of a unified political leadership under the manager plan. What is everybody's business in theory is likely to prove no one's in practice.

Unless some member of the council is qualified to assume, and does assume, the rôle of spokesman for the council, the leadership responsibilities of this body probably will be discharged ineffectively, if at all. Recognizing this difficulty, proponents of the plan often have pointed out that the mayor, as presiding officer of the council and official head of the city, is the man to do the job. In some cities, mayors have proved to be very effective leaders. They have been able to command the support of the other members of the council and the public. Cincinnati, for instance, has been very fortunate in this respect.

However, whether the mayor becomes the spokesman for the council and provides effective political leadership is largely a matter of chance under the manager plan. Too much depends on such variable factors as the mayor's

personality, the character of his relations with other members of the council, the time which he is able and willing to devote to the task, and the extent to which the public, the council, and the manager understand and accept the basic principles of the plan. Apart from the fact that the mayor is the official head of the city and presiding officer of the council, there usually is no legal foundation for political leadership on his part. Legally, his powers and duties are substantially the same as those of other councilmen.

Whether leadership by the mayor can be promoted by strengthening his legal position is a controversial question. Some cities have attempted to increase his importance by authorizing him to appoint certain officials, by making him an *ex officio* member of various boards, and, more rarely, by giving him a suspensive veto over actions of the council or by empowering him to appoint the manager with the council's approval. What these cities have done is to give to the mayor limited power of the type enjoyed by mayors under the mayor-council plan.

To the writer, these efforts represent an unwise compromise between the features of council-manager and mayor-council government. Under the strong mayor-council plan, the elective mayor usually is a powerful political leader. The chief legal basis of his leadership is the fact of his election in combination with his control over administration, especially his broad powers of appointment and removal. Most mayors have been willing to mix politics and administration to the extent necessary to make themselves politically powerful.

The sacrifice of administration to political considerations is too high a price to pay for political leadership. For this reason, the granting of even limited administrative authority to the mayor under the manager plan represents a step in the wrong direction. If a legal foundation be needed to promote political leadership by the mayor, arrangements should be made to strengthen his position in regard to policy-determination rather than in relation to administration.

A possible way of achieving this objective is to impose on the mayor the duty of submitting a policy program to the council, to give his proposals the status of privileged business in council proceedings, and to empower him to order a popular referendum in the event of rejection of his proposals by the council. It probably would be desirable to provide an additional means of resolving serious conflict between the council and the mayor.

For instance, if the mayor were chosen by the council from its own membership, as he is in most council-manager cities, he might be made subject to removal at the pleasure of the council majority but at the same time be armed with the power of appealing to the voters by dissolving the council and ordering an immediate election. The outcome of this election would determine the mayor's fate. His leadership would be the principal election issue.

If the mayor were chosen by direct popular vote, as in some cities, sustained conflict between the council and the mayor could be resolved in essentially the same way, i.e., by enabling the mayor to dissolve the council. The

mayor would be obliged to resign if the opposition succeeded in retaining control of the council at the ensuing election. Provision could be made for the choice of his successor by the council. The person so chosen would serve for the unexpired portion of the mayor's term.

There are valid objections to the foregoing or similar proposals for giving the mayor more control over policy in order to promote political leadership on his part. In the first place, the caliber of the council as a whole might be lowered if one member, the mayor, were vested with special powers and privileges in regard to policy-determination. Second, a more powerful mayor might be tempted to interfere too much with the manager, thereby undermining the foundations of the plan. Third, the relations between manager and council might be adversely affected, inasmuch as the manager might find it expedient to cater to the mayor and become his servant rather than the servant of the council. However, appointment and removal of the manager by the council should prevent this from happening. Fourth, the voters might be confused concerning the relations between mayor and council and experience difficulty in determining the location of political responsibility.

As pointed out above, the people in many cities have failed to grasp the idea that the council alone bears political responsibility under the manager plan. Consequently, charter provisions designed to elevate the mayor to a position of leadership might create the impression that responsibility is divided between mayor and council or that the council no longer bears any responsibility whatever. In fact, it is difficult to strengthen the mayor's hand in relation to policy-determination without impairing the council's responsibility to some extent. Such impairment might be avoided by simply charging the mayor with preparation of a legislative program and by authorizing the council to remove him at pleasure. However, merely requiring the mayor to present a policy program, without giving him additional powers of the type suggested above, would leave him in substantially the same position as he now occupies.

Another basis of opposition to an increase in the policy-determining authority of the mayor is the belief that the problem of political leadership will solve itself without legal aids as soon as a community gains understanding of the idea of the manager plan and develops the habit of electing public-spirited community leaders to the council. It is argued that the growth of proper local traditions is merely a question of time. Without them, even the most promising legal arrangements will prove ineffective in practice.

#### GENERAL RESULTS OF COUNCIL-MANAGER GOVERNMENT<sup>17</sup>

Determination of the results of council-manager government is a difficult task because of the lack of precise means of measuring the efficiency, the effectiveness, and the general adequacy of governmental operations. More-

<sup>17</sup> See H. A. Stone, D. K. Price, K. H. Stone, *op. cit.*, pp. 258-261, for a brief summary of the general results of the council-manager plan in the 50 cities covered by the survey.

over, each city represents a distinct case, and even if it were easy to make reliable comparisons between governmental conditions in particular cities prior to and after the establishment of the council-manager system, there would remain the problem of ascertaining the extent to which the plan itself was the cause of either a raising or a lowering of standards of performance. For example, a betterment of conditions might be attributable to a civic awakening rather than to the plan's superiority as an instrument of government.

Although the test of pecuniary profit and loss is inapplicable in the governmental field, financial statistics which reveal increases or decreases in governmental expenditures, tax rates, or indebtedness frequently are relied on by friends and foes of the manager plan in drawing comparisons. Unless used with care, such statistics may lead to false conclusions. For instance, decreases in expenditures and tax rates may be the consequence of curtailment or even discontinuance of socially necessary services; or they may mean greater efficiency and effectiveness in the performance of governmental activities. Again, an increase in governmental costs may be due to the fact that the government is expanding its program of socially necessary services or it may be the result of inefficiency and waste. Without information concerning the extent and the quality of the services being rendered in a given community both before and after adoption of the council-manager plan, and without more dependable means of measuring the quality of services than now are available, financial statistics should be used with the greatest caution.

In spite of the pitfalls confronting those who undertake the task of appraisal, enough creditable evidence has been collected to warrant a number of generalizations about developments under the manager plan. These developments have not taken place in every city, but they have occurred in greater or lesser degree in a very substantial majority of the communities which have installed manager government. Many of them appear to be attributable to certain of the plan's structural features.

To begin with, attention is directed to the beneficial results which already have been mentioned in this chapter. The quality of councils has been improved even though later councils in many cities have fallen below the caliber of the first one elected after adoption of the plan. Councils in general have devoted more attention to broader questions of policy and have approached these questions with more of a city-wide outlook than under preceding forms of government. They have, on the whole, left administration to the manager and usually have chosen the manager without being influenced by political considerations. The managers, as a group, have exhibited a professional outlook toward their work and have lived up to their code of ethics in not taking an active part in politics. In general, managers have been able and honest men with a genuine interest in improving the quality of municipal government. The influence of political machines has been weakened, spoils politics have been diminished in com-

munities which suffered therefrom, and petty, personal and factional favoritism and graft likewise have declined in cities of the faction-ridden type.

Experience to date indicates that improvements in administration usually have resulted from adoption of the plan. Some of the reasons for this improvement have been mentioned in the preceding paragraph, viz., less interference in administration by amateur councilman, less mixing of politics and administration, and the professional attitude of managers. Another reason is that the concentration of administrative authority in the manager has brought about better coordination of the efforts and activities of the various administrative agencies of the city government.

More teamwork among the operating departments has curtailed duplication of work and equipment, conflicting administrative policies, and the neglect of certain matters due to the tendency of departments to go their own way without considering their relations to other departments. Managers have been reasonably successful in driving home the idea that each administrative unit is but part of a single whole and that cooperative action among the parts is essential to achievement of the best results.

Other factors contributing to improved administration have been betterment in the organization of the administrative services, more attention to the planning of administrative work and to city planning, the establishment and maintenance of better records, better information about the financial condition of the city, more effective controls over departmental spending, more emphasis upon merit in matters of personnel, and an improved morale on the part of city employees.

Of course, the nature and extent of improvements along the foregoing lines have varied from city to city. Some managers have done excellent work all along the administrative front; some have shown skill in some phases of administrative management, but have neglected or made no progress in others; and some have proved to be mediocre administrators at best. In general, however, the record of managers is one of progress in regard to administrative organization and procedure, financial management, personnel administration, and planning. Most of them have shown appreciation of the need for expert handling of municipal affairs and often have called in expert consultants to aid them in solving various problems.

This generally good showing of managers in the administrative field may be attributed in part to considerations of self-interest. With administrative authority goes responsibility for administrative results, and a manager knows that his future will be affected by his success or failure as an administrator. Staying in office or advancing from one city to another is not a matter of polling a large number of votes at election time.

The emphasis which managers have placed on merit in the selection of personnel, for example, is scarcely surprising in view of the fact that the responsibility for administration rests with the manager and the quality of administration depends in large measure on the caliber of department heads and of the subordinate personnel. A manager who surrounds himself

with incompetents takes a long step toward damaging his reputation as an administrator.

Improvements of the type mentioned in the preceding paragraphs probably have resulted in the attainment of higher standards of performance in the rendition of municipal services. Lack of precise means of measuring the quality of governmental service precludes positive proof that such has been the case, but inasmuch as organization, planning, staffing, and financial practices are known to have a bearing on the performance of work, it seems reasonable to conclude that improvement in these respects will necessarily have resulted in a better quality of service to the public.

There is good reason to believe that in general the people in cities operating under the manager plan are getting a better return on their tax dollars than they did prior to the plan's adoption. At least, evidence to the contrary remains to be unearthed.

#### ABANDONMENTS OF THE COUNCIL-MANAGER PLAN<sup>18</sup>

An indication of general satisfaction with the council-manager system is the small number of cities which have abandoned it. During the period from 1908 to the end of 1947 the plan was adopted by 794 cities in the United States and discarded *by vote of the people* in 31. Votes on retention of the plan have been held one or more times in many cities, but in approximately eight cases out of ten the advocates of a shift to some other form of government have met with defeat. In a few municipalities the plan has been displaced by action of the state legislature, by reason of court decisions declaring its adoption invalid or because of annexation of the cities operating thereunder to cities having some other type of government.

Determination of the reasons why the plan has been abandoned by the voters of a given city is a difficult undertaking because real motives are often hidden, because the opposition is generally composed of groups of voters who favor a change for different reasons, the relative importance of which is hard to determine, and because it is by no means easy to distinguish between fact and fiction in complicated political situations. Evidence of the difficulties of diagnosis is afforded by disagreement among local observers as to why the plan was discarded in a given community. Nevertheless, reports concerning abandonments point toward a number of distinctive circumstances which have produced an unfavorable popular vote on the question of retaining the plan.

It seems fairly clear that in many cities the plan fell by the wayside primarily because politicians and others who opposed its initial adoption waged relentless warfare against it. They deliberately set about to discredit it in various ways and finally gained the support of enough voters to achieve their objective by capitalizing on every little cause of discontent. Their victory was often made possible by the indifference of many qualified voters who failed to participate in the election, by the failure of friends

<sup>18</sup> The information included in this section is based largely on A. W. Bromage, *Manager Plan Abandonments* (New York, National Municipal League, 1940).



of the plan to organize effectively for its defense, and by the fact that sponsors of the plan succumbed to political weariness induced by the persistent and relentless attack of the opposition. Under circumstances such as these, the plan never received a fair trial, basically, perhaps, because the community as a whole failed to subscribe to its fundamental principles and objectives.

In some cities the passing of the plan appears to have been caused largely by the development of conditions which led voters to oppose established ways of doing things on the theory that any kind of a change, whether in officials or in the form of government, would help to remedy a grievous situation. Thus it seems that some of the cities which discarded the plan in the early 1930s did so because of depression psychology, even though the manager plan certainly was not the cause of economic maladjustments. Again, a few cities in Florida are reported to have deserted the manager plan partly because of the collapse of the real estate boom in that state. In Fall River, Mass., economic distress in the textile industry, the financial difficulties of the city government which antedated adoption of the plan, but came to a climax after its establishment, and the creation of a state appointed agency to manage local finances combined to bring about the abandonment of the plan. In practically all of these cases, political opponents of the plan were quick to take advantage of the extraneous circumstances which created a disposition for change on the part of the voters. Apathy on the part of many voters also was a contributing factor.

Abandonment of the plan in a number of instances seems to have been due to such causes as the following: defective charter provisions; misunderstanding of the plan's controlling principles; failure of the plan to live up to certain expectations of the people; conflict between the principles of the plan and the type of government which the people in the city really wanted. An illustration of each of these situations will suffice.

In one city the charter vested such extensive appointive powers in the council that the manager's position as administrative head proved to be more nominal than real. Confusion concerning the respective rôles of mayor, manager, and council was an important factor in discrediting the manager plan in another city. The failure of the new government to bring about an expected reduction in the tax rate seems to have been the controlling consideration in at least one community. And in several instances the people were unable to accustom themselves to an appointed administrator because of the conviction that an official as important as the manager should be chosen directly by the voters. Dissatisfaction with the plan for reasons such as these accounted for fewer abandonments than did the opposition of politicians or the development of conditions which, although extraneous to the plan, produced a demand for change.

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*CHAPTER XXII*  
ORGANIZATION AND CONTROL OF  
ADMINISTRATIVE SERVICES

*Outline*

**The Nature of Administration**

**Types of Administrative Functions From the Standpoint  
of Their Nature**

- (1) Managerial Activities
- (2) Operational Activities
- (3) Quasi-judicial Activities

**Types of Administrative Functions From the Standpoint  
of Their Objectives**

- (1) Line Functions
- (2) Auxiliary Functions
- (3) Staff Functions

**Control of Administration by the Council, the Courts, and  
the Chief Executive**

**Control by the Council**

- (1) Determination of Administrative Policy
- (2) Organization and Procedure
- (3) Expenditures and Revenues
- (4) Accounts, Records, Reports, Audits, and  
Investigations
- (5) Appointments, Removals, and the Estab-  
lishment of Personnel Policies
- (6) The Direction of Administration

**Judicial Control**

**Control by the Chief Executive**

- (1) Requisites for Effective Management
  - (a) Information
  - (b) Managerial Aids and Instrumentalities of  
Control
  - (c) Adequate Authority
  - (d) A Manageable Organization

**Organization of the Administrative Services**

**Basic Principles of Organization**

**Nature and Number of Departments**

- (1) Grouping Activities
  - (a) By Purpose
  - (b) By Process

- (c) By Persons Served
- (d) By Place of Service
- (e) The Use of These Criteria
- (2) Unifunctional Departments
- (3) Centralization of Auxiliary Functions
- (4) A Manageable Number of Departments
- Internal Organization of Departments
- General Features of a Satisfactory Administrative Organization
- Importance of Administration

THE DISTINCTIONS between the several patterns of government which have been discussed in preceding chapters are based on the character of primary governmental organs, the nature of their relationships and the way in which powers and functions are distributed among them. Top agencies like the council, the commission, the mayor, and the manager play vital rôles in the governmental process. However, they represent only a part of the entire machinery of city government which includes departments, bureaus, divisions, and a variety of offices and boards. The subject matter of this chapter is the organization of these subsidiary agencies and the nature of their relations to the dominant organs of municipal government. Emphasis is placed on the general principles of organization and control which experience has demonstrated to be sound.

### THE NATURE OF ADMINISTRATION

Politics and administration are the two basic functions which are involved in the operation of governments. The former includes all activities pertaining to the formulation and determination of public policy and the latter consists of "all those operations having for their purpose the fulfillment or enforcement of public policy" as declared by the competent authorities.<sup>1</sup>

Most persons are familiar with the traditional classification which distinguishes three major types of power, legislative, executive, and judicial. Under the aforesaid dual classification, executive and judicial functions are assigned to the broad category of administration and legislative action is covered by the term "politics."

The definition of *administration* as embracing all activities which are involved in effectuating established policies runs counter to common usage in the United States. As a rule, the judicial function of settling controversies which arise under the law is looked upon as falling outside the administrative category and a sharp distinction is drawn between the judicial and administrative branches of government. Often, too, administration is defined so narrowly as to exclude executive functions. Again,

<sup>1</sup>L. D. White, *Introduction to the Study of Public Administration*, 3rd ed. (New York, The Macmillan Co., 1948), p. 3.

in deciding cases and handing down opinions, the courts ordinarily use the term "administration" in a restricted sense and resort to such phrases as quasi-judicial or quasi-legislative to describe activities of administrative agencies which bear close resemblance to strictly legislative and judicial functions. These illustrations indicate the need for care in determining the sense in which the words "administration" and "administrative" are used in particular instances by private persons and by legislatures, courts, and other official agencies.

Confusion in terminology is partly due to the difficulty of drawing precise lines of demarcation between different categories of functions. By way of illustration attention is directed to the rule-making power of the chief executive. Executives sometimes are authorized to prescribe the rights and duties of private persons in their relations with one another or with the government. From one point of view, the issuance of the necessary regulations is an administrative activity serving the purpose of giving effect to a basic policy which the legislature has set forth in general terms. Viewed from another angle, however, this type of rule-making by the executive constitutes a policy-determining function inasmuch as the rules establish details of policy which the legislature has seen fit to leave to executive discretion.

Misuse of terms also is attributable to the circumstance that agencies of government which are described as administrative or legislative, because of the character of their predominant function, actually engage in activities which fall in other categories. Thus legislative bodies exercise administrative powers and administrative agencies participate in various ways in policy determination. The term which appropriately describes the essential nature of a given organ of government often is carelessly applied to each and every one of its powers.

Another cause of uncertainty concerning the meaning of words like legislative, executive, judicial, and administrative is the doctrine of separation of powers and the rule which prohibits one branch of government from delegating its powers to other branches. Practical considerations dictate such delegations in some degree. In order to reconcile them with the rule against delegation, fine distinctions often are drawn and the terms in question are used in special senses suitable to the occasions which necessitate modification of general principles.

**Types of Administrative Functions from the Standpoint of Their Nature.** If administration be defined as comprehending all governmental activities other than those which pertain to policy determination, the three primary types of administrative functions as determined by their nature are: (1) direction and supervision of the work of carrying policies into effect; (2) performance of the operations, i.e., doing the work, which the execution of policy requires; (3) the settlement of disputes which arise under the law. For the most part city officials and employees who participate in administration perform functions of either the

first or second type. Some of them engage in quasi-judicial activities which fall in the third category along with the strictly judicial function discharged by courts in deciding cases. For the purposes of this chapter, the first type of administrative activity will be referred to as managerial and the second as operational. Quasi-legislative functions will receive consideration in the discussion of managerial activities.

(1) **Managerial Activities.** The managerial function looms large at the higher levels of administration. Officials who act in a managerial or executive capacity decide questions of administrative policy, plan the way in which work is to be done, select, discipline, and remove personnel, solve problems of organization, direct and supervise the performance of work, coordinate the activities of their subordinates, conduct investigations and inspections, prepare, receive and examine reports, and deal with budgetary problems. In varying degrees, the chief executive, department heads, bureau chiefs, division heads and other superior officers carry on one or more activities of this type. Even the foreman of a group of workers discharges some of these managerial functions on a limited scale. However, the lower the level of administration the narrower the breadth of decision within the competence of those officials or employees who exercise control over subordinates.

Rule-making by high administrative officials is a device for controlling the conduct of subordinates and also a means of providing the detailed regulations which are necessary to give effect to general policies established by charter provision or by ordinance. This type of activity often is said to be *quasi-legislative* in character because of its intimate relation to policy determination.

The authority to issue rules and regulations may be conferred by the city charter or delegated by the council to a specified administrative agency. Although the council may not delegate away its own law-making or policy-determining powers, there is a growing tendency on the part of councils to sanction the granting of rule-making authority to administrative functionaries if the council establishes the general purposes, standards, and procedures in conformity with which this authority is to be exercised.

The issuance of rules and regulations designed to control the conduct of the administrative personnel clearly constitutes a type of managerial activity. As for the establishment of rules prescribing the rights and duties of private persons in their relations with one another or with the government, there is room for difference of opinion as to whether the activity is legislative or administrative in nature. If considered to be administrative, this function probably should be assigned to the managerial rather than to the operational category of administrative functions. It involves the determination of administrative policy.

(2) **Operational Activities.** Officials and employees at the lower administrative levels are occupied for the most part with performance of

the specific, more or less routine, and often technical work required to carry out the policies of city government. For want of a better descriptive term these activities are herein referred to as *operational*. Examples of this phase of administration are the assessment of parcels of property for taxation, the collection of a tax, the keeping of accounts and records, the construction and maintenance of street pavements, the house-to-house collection of garbage, the reading of water meters, the regulation of traffic at a street intersection, the arrest of a person accused of crime, and the laboratory analysis of water and milk. Most of the work of by far the great majority of city officials and employees is of this character.

(3) **Quasi-judicial Activities.** Although the courts are largely responsible for the settlement of disputes arising under the law, administrative bodies often are authorized to decide controversies which develop in connection with the execution of policies. The area of administrative adjudication is expanding rapidly at the national and state levels, but it remains limited in scope in the field of municipal government largely because the regulatory functions of local units are relatively few in number.

A quasi-judicial activity is one which resembles the function of a court in that a hearing is held, evidence is presented by the disputants, and a decision is reached on the basis of law and fact. It differs from the strictly judicial function principally because proceedings are simpler and far less formal and because the body which settles the dispute is an administrative agency which is composed of persons who presumably are expert in the subject matter rather than in the law. Examples of administrative adjudication in the field of city government are the action of a board of review of assessments in the settlement of controversies concerning the assessed valuation of property, the function of a civil service commission in reviewing the removal of an employee by a department head, and the adjustment of disputes by a board of zoning appeals.

**Types of Administrative Functions from the Standpoint of Their Objectives.** Three varieties of administrative functions are distinguishable from the standpoint of their objectives. The basis of differentiation is the reason for carrying on an activity and the persons or the officials for whose immediate benefit it is undertaken. The three types are line, auxiliary, and staff functions.

(1) **Line Functions.** Line functions are those which are performed for the direct benefit of the public. They often are labelled "purpose," "end," "direct service" or "primary" functions. The discharge of these functions constitutes the reason for the existence of a city government. Examples are the collection of wastes, the lighting and cleaning of streets, police protection, the prevention and fighting of fires, the provision of parks and playgrounds, and the supplying of water. Every activity which amounts to doing something for the immediate benefit of the urban public falls in the line category.



(2) **Auxiliary Functions.** Auxiliary functions may be defined as those which need to be performed to enable the city government to achieve its primary objective of serving the people in various ways. They are sometimes referred to as "housekeeping," "institutional," "means," or "secondary" activities. Among them are the selection of officials and employees, the procurement of equipment, supplies, and materials, the keeping of accounts and records, the maintenance of buildings, grounds and equipment, and the custody of public funds.

No city government hires and fires persons, keeps accounts, or purchases supplies merely for the sake of having something to do, but these things must be done as long as governments are maintained to provide services for the general and direct benefit of the people. Officials and employees performing auxiliary functions are rendering services for the organization of which they are a part. Ultimately, of course, the public is the beneficiary.

(3) **Staff Functions.** Staff functions comprise the investigatory, planning, and advisory activities designed to aid the chief executive and department heads in the exercise of managerial authority. Staff officers study problems referred to them by the executive head, gather needed information, suggest solutions of these problems, and give advice concerning questions of administrative policy. They also serve the executive by conveying and explaining his decisions to the proper subordinates and by presenting reports concerning the effects thereof. Unlike the officials engaged in the performance of line and auxiliary functions, staff officers lack power to command. Assistance in the formulation and transmission of executive decisions, not issuing orders, is the general nature of their function.<sup>2</sup>

The distinctions which have been drawn between the several types of administrative functions from the standpoint of their nature and their objectives reveal the diversified character of the work to be done in executing the policies of city governments. They assume particular significance in connection with the organization of the administrative branch and with the establishment of satisfactory procedures. Their bearing on the selection of personnel also is important.

#### CONTROL OF ADMINISTRATION BY THE COUNCIL, THE COURTS, AND THE CHIEF EXECUTIVE

The administrative agencies and processes of municipalities are subject to control by the council, the courts, and the chief executive. Although

<sup>2</sup> Gulick assigns to the "staff" category "all those persons who devote their time exclusively to the knowing, thinking and planning functions" and to the "line" category "all of the remainder who are, thus, chiefly concerned with the doing functions." Staff officers do not organize others, do not direct or appoint personnel, do not issue commands, do not take responsibility for the job. Line officers have important duties of direction and control. See L. Gulick, "Notes on the Theory of Organization," *Papers on the Science of Administration* (New York, Institute of Public Administration, 1937), pp. 30-31. According to the foregoing distinction, line functions would include both the "direct service" (line) and "auxiliary" activities as defined in this chapter.

the form of city government determines the character of some of these controlling authorities and the nature of their relations to the administrative branch, the basic types and techniques of control are essentially the same under all patterns of government. Legislative, judicial, and executive controls over administration are exercised in various ways and at different stages in the administrative process.

**Control by the Council.** The aggregate of powers granted to councils enables them to exert extensive control over administration. Among the formal methods of control are: (1) the establishment of administrative policy; (2) determination of administrative organization and procedure; (3) regulation of expenditures and revenues; (4) auditing; (5) requiring that accounts and records be kept; (6) enjoining the submission of reports; (7) investigation; (8) the establishment of personnel policies; (9) appointment and removal of administrative functionaries, and (10) direction and supervision of administration.

Some of these methods of control are possessed by all councils, but others are exercisable only under certain types of city government, e.g., the commission plan. The extent of any particular method of control always depends on the degree to which the council's discretionary power is restricted, directly or indirectly, by charter provision.

Before discussing these formal methods of control over administration, a word or two is in order concerning the extra-legal ways and means by which councils and councilmen may influence administration. Among them are conferences between members of the council and administrative officials, criticism voiced by councilmen, political pressure which may be exerted on the chief executive and his subordinates, and informal understandings which may be reached between the council and administrative agencies. Politics, personalities, and pressures of one type or another affect legislative-administrative relationships in a variety of ways. Sometimes extra-legal forces strengthen the hand of the council in the administrative field; very often they have the opposite effect.

**(1) Determination of Administrative Policy.** In formulating and adopting the policies of city government, the council may confine its action to prescribing desired objectives, leaving the issuance of supplementary rules and regulations to administrative authorities, or it may go to the extreme of stipulating details which constitute ways and means of administration rather than policy in the sense of goals to be achieved. Even the performance of specific tasks may be ordered by the council if it chooses to invade the administrative realm.

Most charters require the council to deal with a variety of administrative matters; others grant authority which may be exercised at the council's pleasure; and some contain provisions which are intended to prevent the council from trespassing on the field of administration. Under the commission plan, the commission serves in a dual capacity as the legislative

body and as the chief executive authority. Consequently, its control over administrative policy is necessarily extensive and based on considerations which differ from those which determine the rôle of the council under the mayor-council and council-manager plans.

(2) **Organization and Procedure.** Organization of the administrative services is an important function of the council. Of course, charters usually contain provisions concerning the number and nature of administrative departments and offices. Even so, the authority of the council with respect to organization is substantial. Ordinarily, it may create additional departments and offices and determine the internal organization of such departments as the charter prescribes. A commendable policy is to grant the council full authority to organize the administrative services by adopting an administrative code which can be altered whenever occasion demands without the necessity of resorting to charter amendments. The council, in turn, should delegate adequate power with respect to details of organization to the chief executive. Few charters give the council a completely free hand in the matter of creating departments and offices. Rigid charter provisions concerning administrative organization should be avoided unless local political conditions warrant resort to restrictive measures.

What has been said about organization holds true in general with respect to administrative procedures. These frequently are dealt with in charters, especially in relation to the financial operations of city governments, but the questions which remain subject to control by the council are many and varied. Councils often fix the particulars of procedure and by so doing leave little to the discretion of administrative authorities. In fact, specification in detail is a method of control which all American legislative bodies have been inclined to use to so great an extent in regard to procedural and other matters that administrators have been unable to function as efficiently and effectively as they might if they had enjoyed a greater degree of discretionary power.

(3) **Expenditures and Revenues.** The regulation of expenditures and revenues is a very effective means of council control over administration. Without funds, administrative agencies are unable to function, and occasionally councils have crippled or terminated the activities of an administrative body by the simple expedient of refusing to place sufficient money at its disposal. A council which is opposed to city planning or to the merit system, for example, can withhold the financial support which is necessary for carrying on a worthwhile program of activities.

Normally, councils enjoy broad authority in regard to the amount and purposes of municipal expenditures. If appropriations be made to departments in lump sum form, administrative authorities are free to follow their own judgment in spending the money which has been made available, but if authorizations of expenditures are itemized to an appreciable extent, the contrary is the case.

As a rule, highly segregated appropriations are undesirable. The best policy for the council to pursue is to grant funds in such a manner as to permit administrators to decide on specific expenditures. Various means of holding them accountable for failure to spend money wisely and effectively are available. Under some charters, council control over finances has been restricted to a considerable degree by prohibiting the council from adding new items to, or increasing items in, the budget as prepared by the chief executive, by giving the executive an absolute veto over reductions and deletions voted by the council, or by requiring an extraordinary majority to override a suspensive veto. In most cities, however, the council's power to control financial policy is very extensive.

**(4) Accounts, Records, Reports, Audits, and Investigations.** Four methods of control, viz., requiring that proper accounts and records be kept, compelling the submission of reports, auditing, and investigation, are important aids to the fixing of responsibility for the manner in which administrative officials and employees discharge their functions.

Without adequate accounts of financial transactions and comprehensible as well as comprehensive records of work done, the council stands little chance of checking the legality, efficiency, and effectiveness of administrative action. As an aid to the checking process, administrators should be required to prepare and submit regular reports of their activities. These reports should be transmitted to the council through the chief executive in his capacity as head of the administrative branch.

The auditing of accounts is a means of ascertaining the legality of financial transactions, of revealing dishonest and fraudulent practices, and of obtaining information concerning administrative efficiency. Post-auditing is a function which should be performed by an agency independent of the administrative branch, but under the control of the council. In some cities this work is done by an elective auditor or by a state official, whereas in others the council selects the auditor or provides for an independent audit by a private firm of accountants.

The investigatory power of councils enables them to ascertain the ways in which administrative agencies are operating. Even if this technique of control be used sparingly, the ever-present possibility of a council investigation probably has a salutary effect on the conduct of administrative functionaries.

The information gained from satisfactory audits, reports, and investigations provides the basis for appropriate remedial measures. To realize the benefits derivable from controls of this type, councils should give careful and systematic consideration to the facts which are brought to light. This is something which seldom is done in a proper manner. Partly because of the failure of councils to make effective use of these techniques of control, charter provisions have been resorted to as a means of establishing minimum requirements with respect to accounts, records, reports, and audits.

(5) **Appointments, Removals, and the Establishment of Personnel Policies.** The appointment and removal of administrative officials is a mode of controlling administration which councils possess in some degree under most charters. As pointed out in preceding chapters, an essential feature of the council-manager plan is the power of the council to hire and fire the manager. This authority insures effective control over administration. Under the commission plan, the commission, as the chief executive agency, is empowered to appoint and remove both superior and inferior administrative officials.

The extent of the council's powers of appointment and removal under the mayor-council system varies considerably from city to city. If the mayor's office is of the strong type, the council's appointive and dismissal powers are negligible; if the office falls in the weak category, the council usually makes numerous appointments and removals or approves those which are made by the mayor.

The assignment of extensive powers of appointment and removal to the council is objectionable. It violates the principle of executive responsibility for administrative results. However, the right to choose the chief administrator and to dismiss him at pleasure, as under the council-manager plan, is a satisfactory arrangement which differs fundamentally from the check and balance device of either the selection and dismissal of department heads and subordinates by the council or the requirement of council approval of executive appointments and removals. In the case of commission government, the commission is properly granted the powers of appointment and removal because it is intended to serve as an executive body.

The discretionary powers of the council in the establishment of personnel policies depends on the extent to which matters of personnel are dealt with by charter or statutory provision. In most municipalities, the council enjoys ample authority to determine the number of employees, the compensation system, processes of selection, conditions of employment, and other questions of policy pertaining to the administrative personnel. It sometimes is free to decide on the type of personnel agency and to define its relationship to the chief administrator and other agencies of the city government.

(6) **The Direction of Administration.** The direction of administration by the council is a fairly common occurrence in the field of city government. Under the weak mayor-council system, the council and its committees usually engage in managerial activities, and in some municipalities operating under council-manager charters the council has failed to respect the theory of the plan and has undertaken the exercise of some of the directive functions of the manager. The commission type of government places responsibility for the direction of administration on the commission and individual commissioners. Generally speaking, council participation in administrative management is an undesirable practice.

**Judicial Control.** Control of administration by the courts differs materially from that which is exercised by the council and the chief executive.

It is brought into operation when suits are instituted by private persons or by public officials. Its sole purpose is to settle controversies concerning the legality of administrative action. Judicial control never was intended to serve as a means of ensuring wisdom, effectiveness, efficiency or economy in the administration of municipal services.

Depending on the type of case, whether civil or criminal, or the type of action, whether at law or in equity, judicial remedies include, among others, the awarding of damages, the issuance of writs of injunction to prohibit action, the issuance of writs of mandamus to compel action in fulfillment of imperative duties, and the imposition of punishment for criminal conduct.

Judicial review of administrative acts raises the issue of the extent to which such scrutiny is desirable. The propriety of final judicial determination of disputes concerning jurisdiction, procedure, abuses of power, and the meaning of laws seldom is questioned in the United States. But whether the judgment of the courts or of administrative agencies should prevail with respect to findings of fact is a matter concerning which opinion is sharply divided.

Expert administrators generally are far better qualified than judges to weigh evidence and ascertain facts in fields of a scientific or technical character and to draw the conclusions necessary to reach proper decisions. Moreover, administrative bodies are more effective instrumentalities than courts for the purpose of conducting searching investigations in order to unearth facts. The chief reason for their superiority is that judicial tribunals rely on the biased parties to a case for the presentation of pertinent evidence.

Far reaching, if not complete, review of administrative findings by courts is favored by those who stress the importance of *judicial* protection of private rights. Finality of the findings of administrative agencies in regard to questions of fact and the application thereto of legislatively prescribed standards is advocated by those who possess faith in the fairness of administrators and place emphasis on the need for intelligent, effective, and efficient administration.

**Control by the Chief Executive.** The office of the chief executive stands at the apex of the administrative hierarchy under a properly devised organization. As head of the administrative services, the chief executive bears the responsibility of over-all management, but his ability to discharge it satisfactorily depends on the extent of his authority, the facilities placed at his disposal, and the time and energy required for the fulfillment of other duties.

The chief executive should serve as the general manager of the *entire* administrative branch and in this capacity he should deal with over-all problems of planning, organizing, staffing, direction, coordination, reporting, and budgeting. Luther Gulick coined the term POSDC(O)RB to indicate the functions of management. Each letter stands for one of the activities just mentioned, viz., P for planning, O for organizing, S for staffing,

and so on down the list. The second O was provided for the sake of euphony, but it might well be used to signify "observing" which certainly is something that an executive should do. A more specific and somewhat different classification of managerial responsibilities is as follows: (1) to determine the main lines of administrative policy; (2) to issue the necessary orders, directions, and commands; (3) to coordinate the organization; (4) to authorize the details of organization; (5) to control the management of finance; (6) to appoint and remove personnel; (7) to supervise, facilitate, and control administrative operations; (8) to investigate, and (9) to conduct public relations.<sup>3</sup> On a much narrower scale, department heads and other superior officers perform essentially the same functions for the administrative units placed under their control.

**(1) Requisites for Effective Management.** Assuming a chief executive with the personal qualifications essential to success as a general manager, the primary requisites for effective and efficient management are full information, proper assistance, adequate authority, and a manageable organization.

Without accurate and complete data concerning administrative operations, no executive, however capable, is in a position to make sound decisions. Without the aid of appropriate staff and auxiliary agencies, he will be unable to obtain needed information or to exercise effective control over operating units. Without adequate authority, he will experience difficulty in securing compliance with his directions on the part of department heads and other subordinates. Organization, which is the establishment of formal relationships among persons engaged in cooperative enterprise, largely determines the ease with which information can be obtained, the degree of effectiveness of executive control, and the dispatch and efficiency with which executive decisions are put into effect.

**(a) Information.** The availability of necessary information depends partly on the system of accounts, records, and reports which is installed in the administrative field and partly on the facilities provided for inspection, investigation, and research. A chief executive needs to be well informed about many matters, including the financial condition of the government as a whole and that of its individual administrative agencies, unit costs, the progress made in executing work programs, the efficiency with which work is done, and the conditions requiring governmental attention in the different sections of the city. Unless information of this type is readily obtainable, the administrative head is seriously handicapped in doing the things which are expected of a general manager.

**(b) Managerial Aids and Instrumentalities of Control.** The chief executive should be supplied with managerial aids and instrumentalities of control in the form of agencies properly staffed and equipped to be of real

<sup>3</sup> L. D. White, *op. cit.*, pp. 46-51.

service in planning, preparing the budget, controlling departmental expenditures, making inspections, conducting investigations, and dealing with many phases of the personnel problem. These and other matters arising in connection with the operations of an organization should not be left to the uncontrolled discretion of the heads and subordinates of the various line departments rendering direct services to the public. Effective organization of staff and auxiliary agencies and efficient procedures are essential to attainment of the best results.

Although its primary purpose is to achieve efficiency and economy through specialization, centralization of auxiliary functions like accounting and purchasing is an aid to executive control of administration. The agencies which provide these and similar services for the operating departments should be controllable by the chief executive, but need not be directly responsible to him.

Staff agencies should be placed under his direct control. Their function is to assist him in the task of management. In the largest municipalities, a planning agency, a director of finance, a budget officer, and a director of personnel are needed for this purpose. Some officers, such as the directors of personnel and finance, engage in the performance of auxiliary as well as staff functions. The chief executive also should be provided with a satisfactory number of administrative assistants and a private secretary. Specific arrangements depend on the size of the city and the scope of its activities. In small cities, the assistance of but one or two staff officers or agencies may prove sufficient.

For the purpose of illustrating the need for assistance, brief consideration will be given to the chief executive's part in the budgetary process. Preparation of the budget is a proper responsibility of the administrative head. A budget is a financial program for a definite period of time. On the expenditure side, it is a work program expressed in monetary terms.

To prepare a budget is a task of great magnitude which necessarily involves the participation of many officials. The initial estimates are made by the operating units. If these were accepted as final, the budget, instead of being a unified and well-balanced program, would be nothing more than a collection of estimates emanating from officers with narrow interests and biased in favor of their own particular activities. The chief executive's job is to formulate a plan under which each operating unit's allowance is based on essential needs and on the significance of its service in relation to all others rendered by the city government.

To aid the executive in weighing and checking the requests of operating units, a budget agency should be placed under his control. The directing officer and subordinates of this unit are able to specialize in the task of obtaining pertinent information, reviewing departmental estimates, and developing a well-balanced budget for submission to the chief executive. The latter makes the final decisions and assumes full responsibility for the budget



which is eventually transmitted to the council in the form of a recommendation.

Once the fiscal year begins, the financial program finally adopted by the council must be carried into effect. In the interest of efficiency and economy, the operating departments should be subject to executive control. It is during this stage of the budgetary process that the budget agency again renders important service to the chief executive in studying departmental operations, suggesting measures of economy, and approving the release of funds for departmental use if the periodic allotment plan of controlling expenditures is in effect. Another officer of aid to the executive is the comptroller. His function is to pass on proposed departmental expenditures with respect to their legality, the availability of funds and, sometimes, their expediency from the standpoint of executive policy. These and other devices for executive control of departmental spending necessitate the establishment of various agencies so organized as to be fully accountable to the chief executive.

**(c) Adequate Authority.** The foregoing paragraphs have indicated the nature of the powers which the chief executive should possess if he is to function effectively as general manager of the administrative branch. Among the more essential are an adequate degree of control, direct or indirect, over the system of accounts, records, and reports, preparation of the budget, approval of departmental expenditure plans for each month or quarter of the fiscal year (the allotment plan), review of proposed expenditures, approval of fund transfers, approval of contracts, control over purchasing policy, authority to prescribe details of organization and procedure, powers of inspection and investigation, and authority to issue rules, regulations, and orders.

It also is important that the chief executive be able to determine the personnel policy, subject to guiding principles prescribed by charter provision or by the council, and to appoint and remove superior officials engaged in administration. Departments and other major administrative units should be headed by men in whom the chief executive has confidence and from whom he can secure full cooperation. Selection by some other authority, for example, the council or the electorate, might result in the choice of men hostile to the chief executive and opposed to his policies. Moreover, executive appointment is a better method of selection from the standpoint of the probability that competent officials will be chosen.

The removal power enables the chief executive to get rid of incompetent and uncooperative officials and constitutes an effective although drastic means of ensuring compliance with executive directions, orders, and commands. Without this ultimate disciplinary authority, as well as less severe means of discipline, the position of the chief executive in relation to administration is materially weakened.

Throughout the nineteenth century the position of the American municipal executive with respect to administration was extremely weak. Although

this situation has been rectified in large measure in many cities, control of administration by chief executives to the full degree indicated as desirable in the preceding paragraphs remains unrealized in a substantial proportion of the cities in the United States. The weak mayor-council plan of government still is adhered to by a majority of municipalities and under this plan the mayor is a nominal rather than a real administrative head.

Commission government concentrates executive as well as legislative authority in the commission, but the commission is a plural executive which operates unsatisfactorily inasmuch as each commissioner usually is free to administer his own department without being subjected to effective direction and control by the commission as a whole. Executive control by a group of men ordinarily amounts to little or no over-all control in practice.

It is only in the cities which have adopted the strong mayor-council or the council-manager forms of government that effective executive control over administrative agencies has been developed to an adequate extent. Strong mayors and city managers generally possess reasonably appropriate powers of management.

(d) **A Manageable Organization.** A chief executive's ability to function effectively as a general manager depends in large measure on the manner in which the administrative services are organized. The requirements of a manageable organization are discussed in the following section.

#### ORGANIZATION OF THE ADMINISTRATIVE SERVICES

Proper organization of the administrative services contributes to the efficiency and effectiveness of functional operations and simplifies the task of management on the part of the chief executive, department heads, and other superior officers. Organization involves the establishment of appropriate administrative units, both major and minor, the creation of offices within each unit, the determination of powers and duties, the definition of official relationships, and the allocation of activities among the units of administration. The purpose of organization is to promote attainment of maximum results with a minimum of wasted effort, friction, and confusion on the part of the administrative personnel. Satisfactory organization contributes to coordinated action, i.e., teamwork, in the administrative process.

**Basic Principles of Organization.** Experience in the fields of public and private business has resulted in the recognition of certain guiding principles to be kept in mind in organizing the administrative services. In the first place, the grouping of *related* activities should be the basis for establishing major and minor administrative units. Second, division of responsibility for the administration of particular policies should be avoided. Third, the number of units to be managed by a given administrator should

not be so large as to make effective management extremely difficult, if not impossible. Fourth, auxiliary functions should be centralized, in so far as expedient, to reap the benefits of specialization and to serve as channels for executive control. Fifth, appropriate staff agencies should be provided for each administrator whose managerial duties are fairly extensive. Sixth, authority and responsibility should be clearly defined. Seventh, lines of authority and responsibility should be established in such a way that the entire organization, from top to bottom, is completely integrated and characterized by unity of command. Finally, with certain exceptions, the controlling authority of each administrative unit should be a single official rather than a commission or board.

These guiding principles are to be applied with discretion and a liberal dose of common sense in organizing the administrative branch of a particular city government. Departures therefrom may be necessary and even desirable in view of various conditioning circumstances, such as political traditions, the attitude of the public, the scope of governmental operations, and the results achieved with an existing organization.

**Nature and Number of Departments.** The nature and number of administrative departments is a matter to be determined in consideration of the character and extent of governmental activities, the requirements for efficient performance of work, and the effective span of control by the chief executive. A departmental set-up which is satisfactory with respect to one of these considerations may be undesirable from the standpoint of the others.

Generally speaking, the greatest operational efficiency is achieved by confining the work of each department to one major category of related activities. Any one of several criteria of relationship may be utilized. The problem is to make proper use of each of these criteria in grouping activities and assigning them to appropriate administrative units.

**(1) Grouping Activities: (a) By Purpose.** One criterion of relationship is the ultimate purpose of an activity. All activities involved in effectuating the various policies of the city government in regard to a given objective, e.g., fire prevention and protection, are related from the standpoint of purpose. A common practice in organizing the administrative services is to create a separate department for the performance of each such aggregate of activities. The titles of these major purpose departments indicate the fields of policy to which their activities pertain, viz., police, fire, health, recreation, streets, and education.

**(b) By Process.** Another test of the relationship of activities is the nature of the process, i.e., the type of operation, which their performance involves. Process, rather than purpose, has been a controlling consideration in centralizing personnel administration, the purchasing of equipment, supplies, and materials, the keeping of accounts and records, the handling of

money, and other auxiliary functions which have to be performed by or for all departments.

The technique of purchasing, for instance, is unaffected by the purpose for which a purchase is made. Again, in the design and construction of public works of various kinds, the process is essentially the same, i.e., engineering in character. The purpose of public works varies. Some, such as water supply systems, are undertaken to promote the health, convenience, and safety of the public; others, e.g., streets and bridges, are essential to the safe and efficient movement of persons and goods throughout the city; and still others, such as a stadium or a swimming pool, are for recreational purposes.

The design and construction of public works of one description or another is a distinct type of service which might be made the responsibility of a single bureau or division of engineering, preferably located within a department of public works, for the sake of the economy and efficiency resulting from specialization in a certain type of work. Unless this be done, each major purpose department is faced with the necessity of maintaining an engineering force of its own to design, to construct, or to approve contracts for the construction of such public works as may be required in connection with its operations. Under certain circumstances, e.g., in very large cities, this latter arrangement may prove expedient. In the smaller cities, centralization of engineering services is desirable. Furthermore, the maintenance and operation as well as the design and construction of various public works and the performance of other services which require engineering techniques, e.g., collection and disposal of wastes, are functions so closely related by process as to warrant their assignment to a public works department.

Activities which bear a relation to one another by reason of their major purpose often are related by process as well. The character of the operations of a police department is sufficiently distinctive to require special training for the effective performance of police work. Special techniques also are involved in the work of various other departments which fall in the major purpose category. Examples are public health administration, fire prevention and protection, and recreation. A dual relationship by purpose and by process exists among many administrative activities.

**(c) By Persons Served.** Another basis for grouping activities takes into consideration the persons to be served or regulated by the government. If the well-being of a certain class of individuals is the concern of government or if a service is undertaken for the special benefit of a particular portion of the population, all activities which are designed to promote their welfare or to aid in the realization of the objective of the service may be assigned to a single administrative unit, irrespective of the processes involved or the specific purposes to be achieved.

Thus an appropriate administrative agency might be established to carry into effect all policies relating to the destitute, the delinquent, and the

defective. The creation of such a social welfare agency or department avoids the division of responsibility which results if the several services undertaken in behalf of persons falling in these categories are rendered by two or more departments. Another example of activity-grouping based on persons served is afforded by the fairly common practice of assigning to departments of education certain non-educational activities relating to children of school age, e.g., the medical and dental examination of school children.

(d) **By Place of Service.** The geographical factor sometimes becomes the controlling consideration in administrative organization because of the advantages to be derived from having one agency deal with all matters concerning a particular place. In the field of city government, this factor is significant chiefly in connection with the internal organization of particular departments. An example is a department or bureau of street cleaning, with district divisions headed by foremen who are in charge of all methods of cleaning streets within their respective districts. Decentralization on a geographical basis also is a fairly common feature of the internal organization of police, fire, and health departments, especially in large cities. In municipalities which assign to the department of parks all activities carried on in park areas, e.g., recreation, policing, and the sale of soft drinks and candy, place of service probably has proved influential in the allocation of the activities mentioned.

(e) **The Use of These Criteria.** The use of the several criteria of relationship discussed in the preceding paragraphs depends on considerations of efficiency, effectiveness, and economy in administration. No one of them should be utilized to the exclusion of all of the others.

Grouping by process promotes specialization in the performance of a given type of operation and often reduces overhead costs by obviating the necessity for duplication of personnel and equipment. However, if carried too far, it increases the difficulty of securing coordinated action in the rendition of major services, sometimes causes irritating delays and produces friction, and frequently leads those who specialize in some operation to lose sight of the basic objectives of city government and to look upon their specialty as an end in itself.

Grouping by purpose brings together in one administrative unit all functionaries, whatever their particular activities, who take part in the achievement of one of the major goals of municipal government. It concentrates responsibility for the discharge of each primary function and keeps before every employee the end toward which his activities are directed. If the purpose criterion could be used to the exclusion of all others in organizing the administrative branch, every department would become a completely self-sufficient unit. Such an arrangement is neither possible nor practicable.

(2) **Unifunctional Departments.** Generally speaking, the efficiency of functional operations is promoted by creating enough departments to

permit each one to be unifunctional in character, i.e., responsible for only one major group of related activities. Too few departments results in the grouping of activities which are unrelated from the standpoint of purpose, process, persons served, or place of service.

The allocation of unrelated activities to a given department is objectionable for a number of reasons, viz.: (1) the department head will devote greatest attention to the function in which he is most interested; (2) few department heads are adequately informed in more than one field; (3) the chief executive will be removed from direct contact with the directing authority of each major function; (4) the mixture of unrelated activities hinders the most effective utilization of departmental resources in men and materials. These disadvantages have been demonstrated often enough in practice.

One of the chief weaknesses of the commission plan of government is that unrelated activities are often assigned to the same department because the number of departments is fixed arbitrarily by the size of the commission. With the typically small commission of three or five members, peculiar combinations of activities are inevitable in cities, especially the larger ones, which render a variety of services to the public. Thus the police, fire, and health functions have been placed together in a department of public safety in some commission-governed cities and the bureau of public health has been located in the department of finance in several instances of which the writer has knowledge. The mayor-council and council-manager plans permit the establishment of as many or as few departments as may seem desirable in view of all pertinent considerations.

Although there is much to be said in support of the establishment of a separate department for each major municipal function, the number and extent of the services rendered by a given city government should be taken into account in devising its departmental organization. In small communities, the scope of service may be too limited to warrant adherence to the principle of unifunctional departments, with the consequence that a grouping of unrelated activities or functions in one department proves practicable even though unsound in theory. In large cities, each major service usually is sufficiently broad in scope and complicated in character to justify separate departmental organization. But even in these municipalities departures from the unifunctional principle may be advisable for various reasons. One of them is the desirability of avoiding the creation of so large a number of departments that effective supervision and control by the chief executive becomes impossible. This phase of the problem will be discussed in a following section.

**(3) Centralization of Auxiliary Functions.** Centralization of an auxiliary function means that one agency specializes in rendering a service needed by all departments, e.g., the purchasing of commodities. The alternative is to require each department to take care of the auxiliary activities which are essential to its operations.

Over-centralization is undesirable. Ordinarily, a central agency and the various line departments should share responsibility in regard to an auxiliary service. Thus some aspects of personnel administration can be handled best by a central agency, whereas others require the attention of a departmental personnel officer.

Personnel activities, purchasing, accounting, legal service, the care of buildings and grounds, and the maintenance of motor vehicles are among the auxiliary functions which can be centralized in some degree with beneficial results. Centralization reduces overhead expenses and other costs, promotes expert performance and, in the case of some auxiliary services, contributes to effective management by the chief executive.

The creation of a separate department for the administration of each centralized auxiliary service is undesirable. Officials in charge of many of these services need not be placed under the direct control of the chief administrator. Departments of finance and law are properly included in an administrative organization. The appropriate place for a purchasing bureau and a division of accounts and records is in the former of these departments, but in some municipalities the purchasing agency is given departmental status. The personnel agency usually is organized as an independent unit rather than as a subdivision within a department. If so, its head should be directly responsible to the chief executive. In many cities, that is not the case.

Various plans for organizing staff and auxiliary functions are feasible. One arrangement calls for the creation of a department of general administration including divisions of finance, budgeting, purchasing, personnel, planning, and research.<sup>4</sup> Such a department would bring staff and certain auxiliary functions together in an administrative unit which could prove very useful to the chief executive. Another practicable plan is to set up divisions of the type just mentioned in the department of finance. A third scheme involves the establishment of departments of finance and personnel and the location of staff agencies specializing in budgeting, planning, and research in the office of the chief executive. The foregoing types of organization are by no means the only workable ones which may be devised.

**(4) A Manageable Number of Departments.** A very important consideration in deciding upon the number of administrative departments is the effective span of control by the chief executive. Unless an organization is manageable, the office of chief executive fails to serve the purpose which accounts for its establishment. Fifty or 100 departments are far too many for one man to direct and supervise in his capacity as general manager of the administrative branch. The number should be much

<sup>4</sup>A Department of Administration has been proposed for Detroit. It would be headed by a commissioner responsible to the Mayor and would include the following divisions: budget; purchasing; accounting; personnel; motor transport; public buildings; office services; and a bureau of information and complaints. See *Bureau Notes*, No. 541, October 11, 1948, Detroit Bureau of Governmental Research.

smaller, perhaps 10 or 15 at the most, and preferably fewer. A precise maximum cannot be stipulated because so many qualifying factors enter the picture. Among them are the nature of the departments, the scope of their operations, the facilities for management placed at the chief executive's disposal and the capacities of the individual executive.

Greatly reducing the number of departments makes it difficult to preserve their unifunctional character, while increasing the number complicates the task of over-all management by reason of the unmanageability of the resultant organization. Another adverse consequence of having but a few departments is that each one of them is likely to be too large and to cover too much ground for effective management by the department head. Whether a compromise will have to be effected between the principles of manageability and unifunctionalism depends largely on the nature and extent of the services which a city government renders. That is a matter to be determined for particular cities and not for cities in general.

**Internal Organization of Departments.** The principles to be observed in determining the internal organization of individual departments are the same as those applying to the entire administrative branch. Only related activities should be assigned to each component bureau and division. At the same time, the number of bureaus and divisions should be small enough to permit effective management by the department head and bureau chiefs. Such auxiliary functions as are performed by the department should be placed under central control. Every official and employee should be directly or indirectly accountable to the department head and lines of authority and responsibility should be clearly defined.

The controlling authority of most departments should be a single official rather than a board or commission. For the direction and control of administration, the single head is preferable. For deliberation and adjudication, many minds usually are better than one and preference often should be given to the board type of controlling authority.

A single directing head can act more vigorously, decisively, and quickly than a board and can win the undivided loyalty of subordinate officers and employees, thereby maintaining morale on a high level. Unified leadership of a high quality promotes efficient and effective administration.

Moreover, responsibility is definitely located and the chief executive can deal more effectively with a single head than with a board. Other advantages are the increased likelihood of expert administration and the greater ease of maintaining satisfactory interdepartmental relations through single heads rather than through boards. If occasion demands, boards composed of laymen may be established within departments to act in an advisory capacity or to participate in the performance of quasi-legislative or quasi-judicial functions.

Under some circumstances, the board type of controlling authority may prove advantageous in spite of its shortcomings for administrative purposes. Thus, if a city government establishes a new service after bitter



opposition thereto, or undertakes a new technique of performance unfamiliar to the public, a board composed of opponents as well as proponents of the service or technique may be better able to command the confidence of the people than a single administrator.

Again, a board affords opportunity to enlist the services of competent citizens who have special interests in certain fields, e.g., recreation, parks, libraries, or social welfare work, but are able and willing to devote only a part of their time to civic affairs. It also is argued that greater continuity of administrative policy is insured through the use of boards, inasmuch as provision may be made for staggering the terms of service of members and thereby preventing a complete change in the controlling personnel at any given time.

In some circles, too, the inclusion of laymen on boards is hailed as a safeguard against the professional administrator. Opportunity is provided for representation of both amateur and professional points of view. Finally, if a board has functioned successfully in connection with a given service in a particular city, there is no point in discarding it simply because a single administrator is preferable as a general proposition.

The proponents of boards often argue that a board provides a means of securing non-partisan administration because the representatives of competing political parties will keep an eye on each other and check efforts to conduct departmental affairs on a partisan basis. In view of the experience of American cities with boards, this argument deserves little or no consideration. As a rule, bi-partisan or multi-partisan boards have merely brought about a sharing of the spoils of office instead of a departure from partisan administration.

Despite the advantages of the single head for administrative purposes, the use of boards as controlling authorities of departments is a fairly common practice in the cities of the United States. The extent to which boards are utilized varies from city to city. Some municipalities have boards at the head of most departments; others use the board plan to only a limited extent. The present trend is away from the board and toward the single-headed department.

**General Features of a Satisfactory Administrative Organization.** A well-organized administrative branch possesses the following general features: (1) a chief executive empowered to appoint and remove the heads of departments and provided with the necessary assistants and facilities for adequate management; (2) departments small enough in number to be manageable by the chief executive, but sufficiently numerous to permit most of them to be unifunctional in character; (3) single heads for administrative departments and the use of boards and commissions only for the discharge of quasi-legislative, quasi-judicial, consultative, and advisory functions; (4) the subdivision of departments into a manageable number of bureaus and divisions charged with the performance of related activities; (5) clearly established lines of authority and responsibility

running through successive levels of administration, i.e., from subordinates to the division head, to the bureau chief, to the department head and converging in the office of the chief executive; (6) centralization of auxiliary services to the degree necessary to obtain the most satisfactory administrative results.

A properly integrated organization promotes smooth and effective operation. It helps to prevent evasion of responsibility, conflicts of authority, duplication of work, unnecessary delays, slipshod administration, and the wasteful use of human and material resources. Besides contributing to administrative efficiency, it simplifies the problem of maintaining effective democratic control over the administrative forces. The people and their representatives in the council are placed in a better position to locate and enforce responsibility for poor service or for misconduct of any type.

The general principles of organization which have been reviewed are guides rather than imperatives. They are sufficiently broad to allow ample leeway in working out the details of organization. Their observance is helpful in building a satisfactory administrative structure, but even so a trial and error process frequently must be relied on to ascertain the organizational arrangements which will give the most desirable results under a given set of circumstances.

Many questions concerning organization cannot be answered merely by resorting to some formula, e.g., whether the administration of public hospitals should be the responsibility of the health department or be assigned to an independent controlling agency; or whether public recreational activities should be carried on by school authorities, by a department of parks, by a department of recreation including a bureau of parks, or by a combination of several agencies. Since the needs of different cities never are exactly alike, an arrangement which is adequate in one community may prove undesirable in others.

One of the most important requirements for developing a satisfactory organization is flexibility. The rigid provisions of charters or state laws concerning features of administrative organization usually do more harm than good. Perhaps the most satisfactory plan is to give the chief executive a free hand in dealing with organizational problems. He is responsible for administrative results and is in a position to obtain the information which is necessary in order to make wise decisions and to adjust the organization of the administrative branch in the light of experience and changing conditions. In the face of unwillingness to give such power to the chief executive, the next best plan is to leave matters of organization for determination by the council through the adoption and subsequent amendment of an administrative code.

**Importance of Administration.** The administrative branch of a city government deserves much more attention than is normally directed toward it by the general public. It is largely responsible for the quality

of service which urban residents receive. No matter how satisfactory a policy adopted by the council may be, its actual effectiveness depends on the manner in which it is administered. The beneficial effects of many a policy have been lost because of poor administration.

Of equal significance is the fact that practically all of the money raised for public purposes is spent for administration. If the taxpayer is to obtain a maximum return on his tax dollar, every effort must be made to raise the standards of administrative performance.

Moreover, the way in which administrative officers and employees discharge their functions has a vital bearing on the type of treatment received by the individual at the hands of the city government. Administrators apply general policies to specific situations and the opportunities for arbitrary, unreasonable, and inconsiderate action are indeed numerous. Much injustice can be done in the day to day administration of fundamentally sound and fair policies.

Again, the attitude of the individual toward the authorities in the city hall is determined to a large extent by the impression created by the administrative functionaries with whom he comes into direct contact. An insolent clerk in the treasurer's office, an abusive policeman or a lazy and incompetent health officer can destroy or prevent the development of that good will and respect which are so essential to cooperation between the government and the citizen.

Finally, by reason of the growing complexity of municipal problems, administrative officials are becoming increasingly influential in the determination of local policy. Councilmen often have little choice but to bow to their judgment.

Such matters as organization, procedure, and devices for exercising control over the administrative branch may seem dull and uninteresting to the average citizen. Nevertheless, these phases of the general problem of government cannot be neglected if city services are to be conducted efficiently and economically and if effective popular control over government is to be maintained.

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*CHAPTER XXIII*  
**THE PERSONNEL PROBLEM**

*Outline*

- Personnel Policies: Spoils versus Merit Principles**
  - Spoils System**
  - Merit System**
  - Government Career Service**
  - Obstacles to the Development of Merit and Career Systems**
- Municipal Agencies Dealing With Personnel Matters**
- The Type of Personnel Agency**
  - Bi-partisan Commission**
  - Commission with One Full-time Member**
  - Single Director of Personnel**
  - Single Director with a Board for Rule-making and Appeals**
  - Merits of the Different Types of Personnel Agency**
  - Problem of Small Cities**
- Jurisdiction of the Personnel Agency**
- Essentials of a Comprehensive Personnel Program**
- Functions of the Personnel Agency and the Departments**
- Position-Classification**
- Compensation and Retirement Plans**
  - Compensation Plan**
  - Retirement System**
- Recruitment, Examination, Certification of Eligibles**
  - Recruitment**
  - Examination**
  - Certification**
- Promotions and Transfers**
  - Promotions**
  - Transfers**
- Service Ratings**
- In-Service Training**
- Separations from the Service**
  - Temporary Separations**
  - Permanent Separations: Removals**
- Employee Organizations**
- Circumvention of the Merit System**

THE QUALITY of municipal services depends in large measure on the caliber of the officials and employees who are engaged in rendering them. Proper organization of the administrative forces, satisfactory procedures,

and appropriate techniques of operation are major factors in the production of excellent results. But without a competent administrative staff mediocre service is the best that can be expected. Incompetent public servants are successful in one respect, viz., increasing the cost of government. They are largely the cause of the wasteful and ineffective expenditure of public funds. The compensation which is paid them represents a poor investment for taxpayers who desire a maximum return on their tax dollars. Establishment of a sound public personnel policy is essential to the achievement of good city government.

The magnitude of the personnel problem of a particular city is determined mainly by the scope and the character of its services. A city's size affords a rough indication of its personnel needs. The total number of employees of New York City is about 150,000. Other cities with a population of 1,000,000 or over employ upwards of 20,000 persons. For the population group from 500,000 to 1,000,000, the approximate range is from 6,000 to 17,000; 250,000 to 500,000—1,500 to 7,000; 100,000 to 250,000—500 to 3,000; 50,000 to 100,000—250 to 1,700; 25,000 to 50,000—100 to 800; and 10,000 to 25,000—15 to 600.<sup>1</sup> An important factor bearing on the number of employees is the number and nature of city government enterprises, viz., government-owned water supply systems, electric light and power plants, transportation systems, airports and the like.

For all cities in the United States, the total of full-time and part-time employees was nearly 1,000,000 (997,000) as of October, 1947, and the total pay roll amounted to over \$2,000,000,000 per annum.<sup>2</sup> Nearly one-sixth of all governmental employees in the country are in the service of cities.

Many persons think of the personnel problem as being confined to the hiring and firing of employees. Important as these aspects of the matter are, they represent merely a part of personnel work. In addition to the selection and dismissal processes, the staff problem as a whole includes such significant matters as position-classification, the compensation policy, pensions, the certification of pay rolls, promotions and demotions, disciplinary techniques, in-service training, service ratings, hours and conditions of work, the direction and supervision of work, the building of a proper morale, and employee organizations.

A large proportion of communities still devote most of their attention to the selective process and to the question of security of tenure, but an increasing number are attempting to solve some of the above-mentioned in-service problems in a systematic way. Comparatively few municipalities have installed well-rounded and comprehensive personnel programs. By and large, much remains to be done in the development of satisfactory personnel policies at the municipal level. Even so, cities and the federal government share the honor of having made the greatest progress in the public personnel field.

<sup>1</sup> These figures do not include school employees or the employees of contractors engaged in work for cities. In estimating the range in the number of employees for cities in different population groups, use was made of the *Municipal Year Book, 1948* (Chicago, The International City Managers' Association, 1948), pp. 130-155, Table X.

<sup>2</sup> *Ibid.*, p. 117, Table 1.

## PERSONNEL POLICIES: SPOILS VERSUS MERIT PRINCIPLES

**Spoils System.** Government in the United States at all levels suffered for a long time, and still suffers to a considerable degree, from a personnel policy which is known as the spoils system. Under this policy, appointments, promotions, and separations from the service are based primarily on party affiliation, party loyalty, and the value of the personal services rendered to a party in its efforts to gain and retain control of the government. Ability to discharge official responsibilities is given secondary, if any, consideration. Whom you know and what you have done "for the party" count far more in obtaining and keeping a position than being qualified for the performance of its duties. The political party which wins an election throws out the "rascals" connected with the opposition and replaces them with its loyal and therefore deserving supporters.

The spoils system produces various evil consequences. It promotes insecurity in public service, results in a high turnover in personnel, lowers morale, causes public servants to think more about getting and retaining votes than about doing satisfactory work, and develops a strong distaste for governmental service on the part of numerous capable citizens. Above all, it saddles the community with a governing personnel characterized by general incompetence and mediocrity. A shift from party to party merely has the effect of replacing one group of unfit politicians and their followers with another.

Adherence to the spoils system proves very costly in the operation of governments. A private enterprise pursuing a policy of the same type would be unable to survive for long in competition with concerns placing emphasis on merit in the selection, promotion, and removal of employees. Of course, nepotism, favoritism and the like are practiced to some extent in the business world, but great efficiency in production never has been attained with a generally incompetent personnel.

Following the triumph of Jacksonian democracy in 1828, the spoils system, which had originated in the states and local units, became firmly established at all levels of government, national, state and local, in the United States. The idea that governmental work is simple enough for any normal person to perform and the belief in "rotation of office" were companions to the conviction that the victor was fairly entitled to the spoils.

Agitation for civil service reform gained momentum after the Civil War, but not until the passage of the Pendleton Act by Congress in 1883, shortly following the assassination of President Garfield by a disgruntled office seeker, did the movement result in major legislation intended to curb the spoilsman. From that time on, especially during the twentieth century, establishment of the merit system by law became a frequent occurrence.

**Merit System.** As a personnel policy, the merit system is characterized by emphasis on competence in the selection and subsequent treatment of governmental employees. A person's ability to render satisfactory service

and the quality of his performance on the job take precedence over other considerations. Party affiliation and service, friendship, religious beliefs, family connections and personal prejudices are disregarded in jurisdictions in which the merit principle prevails.

Merit systems may be established by law or be installed voluntarily and informally by those who are in a position to determine the personnel policy of the city government. The advantage of prescription by law is that a permanent basis is provided and that an imperative duty is imposed on the officials who are responsible for personnel administration. Unfortunately, since laws may be evaded in various ways, legal provision for a merit system is no guarantee that it will be realized in practice. Nevertheless, a legal mandate is valuable, if for no other reasons, because it constitutes an obstacle in the path of the spoilsman and involves formal recognition of the desirability of observing merit principles.

The greatest progress in substituting the merit for the spoils idea in personnel administration has been made by cities and the national government. Until recently, few states attempted to deal with the spoils problem, and even today only a limited number of counties operate under merit systems. Estimation of the proportion of municipal employees who are actually dealt with on a merit basis is a difficult matter, partly because of uncertainty concerning the sincerity with which legally established plans are administered and partly because available statistical information casts no light on the practices of municipalities which have failed to provide by law for some type of merit system.

Of 888 cities with a population over 10,000, 35.8% have placed all except a few classes of employees<sup>3</sup> under "civil service" and 33.8% have extended "civil service" requirements to a limited number of classes, usually only firemen and/or policemen. Although the remaining 30.4% operate without a formal civil service system,<sup>4</sup> some of them adhere to the merit principle in practice.

These percentages may create the impression that the proportion of the total number of municipal employees to which the merit principle applies is rather low. Fortunately, this conclusion is unwarranted because a substantial majority of the largest cities operate under merit systems.

Thirteen cities with a population over 500,000 employ approximately 356,000 of the 997,000 municipal employees in the United States and each of them places nearly all classes of its employees under a formal merit system. Again, 66 of 81 cities over 100,000 (81%) apply the merit principle to practically all classes. These 66 account for about 478,000 of the nation-wide total of 997,000 municipal employees. However, not all of the 478,000 are covered by formal merit requirements. Exceptions of the type noted above are made in all cities. Furthermore, the reported coverage of a class does not necessarily mean that the merit policy is applied to all of the positions included therein.<sup>5</sup>

<sup>3</sup> Among the usual exceptions are elected officers, day laborers, and temporary employees.

<sup>4</sup> *Ibid.*, p. 127, Table 8.

<sup>5</sup> The above figures are based on *ibid.*, pp. 130-156, Table X.



The smaller cities make a much poorer showing than the larger ones. Of the 270 cities over 10,000 without a formal merit system, 243 have fewer than 50,000 inhabitants and 206 of these fall within the 10,000 to 25,000 category. Inasmuch as cities below 25,000 employ a minority of the total number of city employees, the failure of a large proportion of them to install merit systems may seem unimportant. Such is not the case. The presumable consequence for each such community is an inferior governing personnel and a lower quality of service. For this reason the percentage of municipalities without coverage probably is a more significant figure than the nation-wide proportion of employees placed on a merit basis. The residents of too many cities still are denied the benefits derivable from a sound personnel policy.

**Government Career Service.** As governmental operations become more complicated and technical in character, the need for establishing public service on a career basis grows rapidly. A career service is one which provides for entrance on a merit basis at an early age, furnishes ample opportunity for able persons to gain promotions in rank, and adequately protects employees against demotion and dismissal for reasons other than incompetence. Such a service enables loyal and competent individuals to serve the government for the duration of their working lives with excellent prospects of bettering their positions as the years go by.

Merely establishing a merit system is an insufficient means of placing government service on a career basis. An additional requisite is *opportunity*, i.e., the chance to get ahead by rising to positions of distinction and honor in the event of demonstrated ability. A person who is appointed to a junior clerkship as a result of achievement on a competitive examination has no career ahead of him if he is destined to remain a junior clerk merely because the channels of promotion are closed to him and to other persons holding similar positions. Provision must be made for the upward movement of competent individuals from the lower to the higher levels of service.

Moreover, at the municipal level, opportunity for betterment should extend beyond the limits of a single city. Otherwise the only chance for even a limited career is confined to the large cities. The career man should be able to progress from one city to another in order to better himself. He also should be free to enter the service of the national, state, and other local governments. In short, complete realization of the career idea requires a nation-wide application of the principles and practices which are involved.

The creation of a career system is an effective method of insuring a steady flow of able men and women into public service. Unless the supply of competent persons is adequate at all times, permanent improvement in the quality of government is out of the question.

**Obstacles to the Development of Merit and Career Systems.** The obstacles to be overcome in placing public service on a merit and career basis are associated with certain erroneous ideas which have received rather

widespread acceptance throughout the United States. In a report published about 15 years ago, the Commission of Inquiry on Public Service Personnel<sup>6</sup> called attention to ten common fallacies "which have had a profound influence on our attitude toward the vital problems of public personnel policy." These false ideas are: (1) "To the victor belong the spoils"; (2) "Patronage is the price of democracy"; (3) "Government work is so simple that anyone can qualify"; (4) "Charity begins on the public payroll"; (5) "Home town jobs should go to home town boys"; (6) "The most efficient public servant is the worst one"; (7) "Public service is always less efficient than private enterprise"; (8) "Permanent tenure is the cure for spoils"; (9) "To eradicate spoils begin at the bottom"; and (10) "The prohibition of specific abuses will eliminate spoils".<sup>7</sup>

The first three of these fallacies constitute a rationalization of the spoils system. Spoils for the victor usually are defended on the ground that the filling of all positions with a party's supporters is necessary to insure devotion to its principles and policies. No distinction is drawn between policy-determining and administrative posts. It also is argued, especially by politicians who are actively engaged in party work, that the survival of strong parties depends on the distribution of patronage among their followers. Belief in principles and policies is considered an insufficient bond of union. Workers have to be paid in some way and appointment to office is looked upon as a highly desirable type of compensation. Neither of the foregoing arguments is supported by experience in this and other countries. A healthy and vigorous party life and effective party control of government have developed in many jurisdictions without being built on a spoils foundation. The mistaken idea that government work is very simple and requires no special ability affords another support for spoils practices. People who labor under this false impression feel little concern about a personnel policy which stresses party connections in selecting employees and results in a high turnover of public servants.

The idea that charity begins on the public payroll leads to appointments on the basis of need rather than ability. People who are unable to support themselves are cared for by providing them with government jobs. The harmful effects of this policy on the quality and prestige of public service are obvious. In practice, many "needy" persons turn out to be faithful political workers and their friends.

The opinion that home town jobs should be reserved for home town boys accounts for the almost universal establishment of a residence qualification for entering the service of a municipality. This type of provision narrows the personnel market to the confines of a particular community and prevents the government from seeking the services of the best men and women regardless of the place in which they happen to live.

<sup>6</sup>This commission was appointed in 1933 by the Social Science Research Council to investigate the public personnel problem and to outline a program for future action.

<sup>7</sup>Commission of Inquiry on Public Service Personnel, *Better Government Personnel* (New York, McGraw-Hill Book Co., 1935), pp. 16-22. By permission of the publisher.

Residence requirements and spoils practices are the most formidable barriers to placement of government service on a career basis. The chief progress in eliminating residence qualifications has been made in connection with city managers, teachers, librarians, and health officials.

Notions to the effect that governmental agencies always are inefficient and that the most efficient public servant is the worst one are fostered by persons who dislike government and fear an expansion of its activities. The spreading of such ideas promotes disrespect for government and discourages capable men and women from entering public service.

Fallacious views concerning the appropriate cure for spoils practices result in an improper approach to the personnel problem. Permanent tenure, beginning at the bottom, and prohibiting specific abuses are ineffective remedies. Unless associated with careful selective techniques, a guarantee of permanent tenure does more harm than good. Its effect is to freeze incompetents in their positions. The "begin at the bottom" idea is unrealistic because it ignores the important rôle of high officials in spoils practices and overlooks the fact that the attractiveness of public service for people of ability is largely determined by the opportunities for working upward to positions of major significance. Emphasis on the prohibition of specific abuses is an inadequate substitute for the militant promotion of a comprehensive and constructive personnel policy. The results of a negative approach usually are disappointing.

Fortunately, fallacious ideas of the foregoing type are losing their hold on the American public. The steady demand for an expansion of governmental activities is being accompanied by a growing realization that a high quality of service is essential to community welfare and that a competent personnel is a major means to that end.

#### MUNICIPAL AGENCIES DEALING WITH PERSONNEL MATTERS

The adoption and administration of a personnel policy involves the co-operative action of various agencies of city government. Among the more important of them are the council, the chief executive, the budgeting bureau, the personnel agency, department heads, bureau chiefs, and other superior officers who direct and supervise the activities of subordinates. Personnel work is by no means the responsibility of but one organ of government.

Subject to controlling charter provisions, the council possesses authority to settle questions of policy and procedure in the personnel field. Its control of the purse strings enables it to prescribe the number of employees and the amount of their compensation. The chief executive participates in the formulation of the personnel program, supervises its administration, and wields powers of appointment, discipline and removal. In preparing the budget, he makes important decisions concerning the city's needs with respect to man-power. As general manager of the administrative branch, he should have a substantial voice in the solution of personnel problems in general.

The central personnel agency is charged with the responsibility of per-

forming many functions for the benefit of the operating departments, e.g., the administration of examinations, preparation of eligible lists, and the installation of a service rating system. It renders expert services and acts in behalf of the chief executive in regard to many personnel matters. Department heads, bureau chiefs, and other superior officers make appointments, direct and supervise the work of subordinates, undertake the task of training them, and, among other activities, take the initiative in resorting to disciplinary measures. Other agencies concerned with certain phases of the personnel problem are the department of finance and the pension board.

The foregoing description of the parts played by different city authorities in the personnel field is merely suggestive of the division of responsibility which is likely to be encountered in practice. Personnel administration requires teamwork on the part of a variety of city agencies. Actual arrangements vary from city to city, especially with respect to the extent of the personnel program, the respective powers of the council and the chief executive, and the character of the relations between the chief executive and the central personnel agency, if there be one.

#### THE TYPE OF PERSONNEL AGENCY

In cities without a centralized personnel system, the chief executive and the heads of departments bear the primary responsibility for handling personnel matters. The director of each department may do much of the work himself or assign it to one or more of his subordinates, possibly a departmental personnel officer.

If personnel administration be centralized in some degree, arrangements have to be made for an appropriate central agency. Various kinds are found in American cities, but the two basic patterns are the board and the single director types. One of the most important questions to be settled in setting up a central agency is the character of its relations to the chief executive and the operating departments.

**Bi-Partisan Commission.** The traditional type of agency is the bi-partisan civil service commission of three or sometimes five members. It was the original favorite among civil service reformers and survives in most municipalities. In some cases, however, the bi-partisan feature has been discarded. This type of agency ordinarily is so organized as to be rather independent of the chief executive and in a position to check and control him and the department heads in the selection of municipal employees. The primary idea was to provide protection against spoils practices.

Most common among the various methods of choosing the members of the commission is appointment by the mayor with or without the approval of the council. In many cities the council selects the members of the board, in some the city manager, and occasionally other modes of selection are provided, e.g., judicial appointment, popular election,

self-perpetuation following original selection by the council or some other authority, and appointment by a combination of agencies.<sup>8</sup> The rather long terms of service of the civil service commissioners usually are staggered for the purpose of promoting continuity of policy and curtailing control by the chief executive.

Civil service commissions of this type ordinarily are authorized to perform administrative as well as quasi-legislative and quasi-judicial functions. Some of them devote full time to their work, but as a rule they either employ an executive officer to handle the administrative matters or designate one of their members to act in this capacity.<sup>9</sup> Different titles are applied to this administrative position, e.g., secretary, chief examiner and secretary, executive secretary, personnel director, or chairman. The division of duties between the board and the executive officer is prescribed by law in some jurisdictions, but left to the discretion of the board in others.

**Commission with One Full-Time Member.** Dissatisfaction with the bi-partisan board has led to its replacement in a few jurisdictions by a commission composed of one full-time and two part-time members. The former handles the administrative aspects of personnel work and the commission as a whole exercises powers of a quasi-legislative and quasi-judicial character. This kind of organization represents a compromise between the board and the single director plans.

**Single Director of Personnel.** Another type of agency is the single director of personnel who is chosen by and is responsible to the chief administrator. Sometimes a commission is provided solely for advisory, consultative, and investigatory purposes. This body includes representatives of the public and perhaps the employees as well. The single director is placed in charge of such personnel functions as have been centralized. His subordination to the chief executive is justified on the ground that the personnel agency should be closely integrated with the general administrative structure. Stress is laid on the idea of service to the chief executive and the department heads rather than on the policing or protective theory which underlies the creation of a personnel agency with an independent status.

**Single Director with a Board For Rule-making and Appeals.** In some jurisdictions the personnel agency consists of a single director associated with a commission which possesses quasi-legislative and quasi-judicial powers, i.e., authority to adopt rules concerning such matters as examination procedure, hours of work, and attendance and the right to hear

<sup>8</sup> Examples are one each by the mayor, the council, and city employees, or by the mayor, the chamber of commerce, and the International Association of Fire Fighters, or by the council, the hospital board, and the board of education.

<sup>9</sup> Although the commission usually selects the executive officer, he sometimes is appointed in some other way, e.g., by the mayor, by the council, on the basis of seniority among board members, or on an *ex-officio* basis, i.e., the city clerk may act as the board's secretary. In some instances the appointment is made after a competitive examination administered by the commission or by a specially appointed examining board.

appeals from suspensions, dismissals, or service ratings. The personnel director, who is responsible to the chief executive, controls the administrative aspects of personnel work.

In Cincinnati, for instance, the members of the commission are chosen by several authorities, viz., one by the Board of Education, one by the mayor, and one by the Board of Directors of the University of Cincinnati. Its primary functions are rule-making and the hearing of appeals. The secretary of the commission is appointed by the city manager. He acts as chief examiner for the commission and as personnel officer for the city.

The *Model City Charter* of the National Municipal League provides for a similar organization.<sup>10</sup> It establishes a department of personnel which includes a director appointed by the chief administrator and a personnel board of three members chosen by the council. As head of the department, the director is placed in control of administrative functions. He also is authorized to prepare and recommend rules to the personnel board. The latter is empowered to adopt and revise rules, to give advice concerning personnel problems, to conduct investigations, and to hear appeals and make recommendations to the chief administrator in suspension, demotion, and removal cases. An organization of this type constitutes a compromise arrangement under which a board is retained, but primary emphasis is placed on the principle of administration through a single personnel director accountable to the chief executive.

**Merits of the Different Types of Personnel Agency.** The present trend of professional opinion favors the single director type of agency rather than the board or commission. This change of attitude is attributable to several considerations.

In the first place, for reasons stated in the preceding chapter, boards are unsatisfactory for the performance of the administrative duties which loom large in personnel work. Secondly, personnel administration is recognized to be a function of management. The single director type of agency under the control of the chief executive is more suitable than a board from this point of view. Finally, the board idea was associated with the original objective of creating an agency which by reason of its independence would be able to prevent spoils practices on the part of appointing authorities, including the chief executive. The board was designed to check rather than to serve these authorities. Greater weight now is attached to the efficiency, economy, and service motives. The policing or protective conception is losing ground as a result of changed conditions, new attitudes on the part of chief executives and department heads, and a growing appreciation of the importance of personnel functions as a phase of management.

Those who oppose the single director form of organization distrust chief executives and department heads, fear that one man will be unable to

<sup>10</sup> Art. VII, Secs. 110-117.

withstand political pressures, and believe that the board affords a desirable means of giving representation to different interests, viz., majority and minority parties, management, employees, and the general public.

The conditions which first produced the personnel board still exist in some communities and under such circumstances a personnel agency in the form of a civil service commission probably remains preferable to the single director under the control of the chief executive. Otherwise, preference should be given to the single director plan either with or without a non-partisan board possessing limited powers. A board for the sole purpose of giving advice, being consulted, and investigating the personnel system seems highly desirable. Nor is there serious ground for objection to the conferment of quasi-legislative and quasi-judicial powers as long as the board is prevented from trespassing on the administrative field.

**Problem of Small Cities.** Small cities present a different problem than large ones because of the limited scope of their personnel needs and their restricted financial resources. The creation of an up-to-date personnel agency fully equipped to handle the technical phases of personnel administration is neither practicable nor necessary. However, it is difficult to determine the precise point at which the employment of a full-time administrator proves inexpedient. Rough guides which have been suggested are a population below 75,000 or a number of employees fewer than 500.<sup>11</sup>

A feasible solution of the small city problem is to have needed technical work done by the agencies of other governmental units or on some sort of cooperative basis. In Massachusetts, the state personnel agency serves both large and small cities under a law which makes this arrangement mandatory. Maryland, New Jersey, and New York also provide for state service to municipalities, but in these states the acceptance of such service is optional for each city.<sup>12</sup> The state bears the expenses involved. A number of other states, including California, Minnesota, New Mexico, Rhode Island, Tennessee, and Wisconsin, also authorize their personnel agencies to render technical administrative services for local units. In California and most of these states service is provided on a contractual basis and the cities pay the expenses which are incurred.

Some states have authorized municipalities to contract with other cities or counties for the administration of technical services. Under enabling legislation in California, for example, the County of Los Angeles does personnel work for a number of cities and in Alabama the personnel board of Jefferson County administers the merit systems of several cities, including Bessemer and Birmingham.

Another type of cooperative arrangement is found in Michigan. The Michigan Municipal League, an association of cities, maintains a municipal personnel service which enters into contracts on a cost basis with

<sup>11</sup> *Personnel Programs for Smaller Cities* (Chicago, Public Administration Service, 1940), Publication No. 73, pp. 4-5.

<sup>12</sup> State administration for municipalities in New York occurs if a local unit adopts one of the optional forms of civil service administration which are provided for by law. *Book of the States, 1948-49* (Chicago, The Council of State Governments, 1948), p. 196.

such municipalities as desire to avail themselves of its technical personnel services. It has installed merit systems for some cities, furnished complete operating service for others, and prepared, administered, and scored examinations for a substantial number of communities.

Even under arrangements of the foregoing type, each municipality necessarily must provide for the local handling of various phases of the personnel problem. The chief executive may attend to these matters himself or delegate the responsibility to an appropriate subordinate. A part-time board also may be maintained to give advice, issue rules, conduct hearings, and investigate the local personnel situation.

#### JURISDICTION OF THE PERSONNEL AGENCY

In cities which establish a formal merit system, a distinction is drawn between the *unclassified* and the *classified* service.<sup>13</sup> Positions which lie beyond the scope of the personnel agency's authority fall in the former category. It usually includes positions held by elective officials, the members of boards and commissions, department heads, other high officials like bureau chiefs and division heads, and persons employed by contract for special services. The *classified* service comprises all positions to which the jurisdiction of the personnel agency extends. As a rule posts assigned to the *unclassified* service are enumerated and all others are understood to be included in the *classified* category.

Determination of the scope of the classified service is a responsibility of the council unless this question is settled by charter or statutory provision. Opinions differ concerning the proper location of the line of demarcation between the classified and unclassified services.

Prevailing practice in the United States is to exclude from the former all of the highest administrative offices, e.g., departmental headships, and a great many other positions, both high and low, many of which probably should be included within it. Perhaps the line should be drawn between policy-determining and non-policy-determining administrative functionaries. There is much to be said in favor of giving the chief executive a free hand in choosing department heads, certain staff officers, and a number of other officials who aid him in shaping administrative policy. He should be able to select men who believe in his policies and enjoy his confidence. For the same reasons, department heads probably should be permitted full discretion in choosing one or two assistants.

With certain other exceptions, e.g., private secretaries, all remaining appointive positions should be placed in the classified service. If this were done, the unclassified category would consist only of elective offices and the highest and most confidential posts involving participation in the determination of administrative policy. Some of the opposition to the inclusion of top posts is due to an unwarranted lack of confidence in the adequacy of

<sup>13</sup> The terms "classified" and "unclassified" sometimes are used in different senses than here indicated.



testing devices for the purpose of ascertaining the possession of those qualities which officials like department heads and bureau chiefs should possess.

The inclusion of a position within the classified service does not necessarily mean that it will be filled as a result of an examination of some type. This service is in turn subdivided into an exempt class, a non-competitive class, a competitive class, and sometimes a labor class. Assignment of particular positions to these categories is one of the responsibilities of the personnel agency.

The exempt class includes positions to which it is deemed impracticable to apply the principle of choice by examination. Among them are higher administrative posts, positions of a confidential type, and part-time or temporary positions. Appointing authorities may follow their own judgment in choosing persons for positions in this class.

The non-competitive class covers positions for which "pass" rather than competitive tests are given. Appointing officers enjoy freedom of selection subject to the requirement that the appointee pass a test devised by the personnel agency. The non-competitive plan often is applied to top administrative posts and to those involving duties of a highly technical character.

The competitive class comprises all positions for which competitive examinations are administered in order to prepare lists of persons eligible for appointment. It includes all employments except those allocated to the exempt, non-competitive, and labor categories. The labor class usually covers unskilled laborers. Lists of eligibles ordinarily are prepared without resort to examinations.

Practice with respect to the allocation of positions to the several classes varies from jurisdiction to jurisdiction. Many positions which should be assigned to the competitive class often are placed in either the exempt or non-competitive groups. A personnel agency dominated by interests hostile to the merit system is very likely to undermine it by placing an unduly large number of positions in these classes without justification other than the desire to circumvent the law which requires selection on a merit basis.

#### ESSENTIALS OF A COMPREHENSIVE PERSONNEL PROGRAM

An adequate personnel program covers many matters in addition to the selection and dismissal of employees. In too many communities, however, primary emphasis still is placed on the entrance and departure phases of personnel administration and little or no effort is directed toward the systematic solution of in-service problems. Although limited instead of comprehensive policies remain the rule in most cities, steady progress is being made toward the rectification of this situation.

A comprehensive program includes satisfactory policies with respect to: (1) position-classification; (2) recruitment, i.e., the attraction of suitable candidates for municipal service; (3) the devising and giving of examinations, preparation of eligible lists, and certification of the names of eligibles to the proper appointing authorities; (4) the compensation of employees;

(5) pensions; (6) promotions, transfers, demotions and separations from the service; (7) service ratings; (8) in-service training; (9) attendance, leave, and hours of work; (10) the health and safety of employees; (11) employee relations; (12) research. All of these phases of personnel administration except the last may be assigned to one of three basic categories, viz., selection, in-service treatment, and separations. Most of them represent in-service problems.

#### FUNCTIONS OF THE PERSONNEL AGENCY AND THE DEPARTMENTS

The functions of a central personnel agency depend on the comprehensiveness of the personnel program of a particular municipality and on the appropriate division of work between the central agency and the operating departments. Some phases of personnel work require centralization in the interest of economy, efficiency, and over-all management, but others necessarily remain in the hands of the departments. The administration of various in-service personnel activities is a departmental responsibility.

The primary rôle of the central agency is to serve and assist the operating departments through planning, coordination, the giving of advice, and the rendition of certain services. Among its specific activities are: position-classification; the devising and recommending of some plan of standardized compensation; recruitment, examination and certification of eligibles; assisting in the process of promotion by administering tests and installing and supervising a service rating system; exercising control over transfers; developing in-service training programs; establishing rules pertaining to attendance, leave, and hours of work; promoting satisfactory working conditions; investigating instances of illegal dismissal and in some jurisdictions reviewing suspension and dismissal cases and handing down final decisions; and certification of payrolls. The personnel policy of a given city and its plan of administrative organization determine the nature and extent of the central agency's functions.

The operating departments play an important part in personnel administration. Appointments and promotions are made by the department head from eligible lists supplied by the personnel agency and the direction, supervision and assignment of work are responsibilities of departmental officials. The training of employees and the making of service ratings necessarily require action on the part of each department. In addition, the initiative in such matters as suspensions, demotions, reductions in pay for disciplinary reasons, and removals lie with superior departmental officers. Under some personnel systems their decisions concerning these aspects of personnel management are final. Moreover, every department is called upon to keep personnel records, to participate in the administration of policies pertaining to the health and safety of its employees, and to see that proper working conditions are maintained.

The satisfactory execution of a comprehensive personnel program requires cooperative action on the part of the central agency and the depart-

ments. Integration of the functions of all officials dealing with personnel problems is a primary responsibility of the chief executive in his capacity as head of the administrative services.

#### POSITION-CLASSIFICATION

Position-classification involves the grouping of positions on a duties basis. Each class consists of all positions, irrespective of their location within the operating departments, with duties and responsibilities so similar that the same qualifications, the same tests of competence, and the same compensation schedule may be established with respect to them.

A classification of this type is essential to effective personnel administration. It is an invaluable aid to recruitment, the preparation and administration of examinations, the establishment of lines of promotion and demotion, the control of transfers, the administration of a service rating system, the development of in-service training programs, the prescription of standards of job performance, the standardization of working conditions, budgeting for personal services, and salary standardization.

Without such a classification, the fair treatment of employees and the systematic handling of most personnel problems become extremely difficult if not impossible. To attempt to deal with particular positions in disregard of their relationship to others on a duties basis is to insure haphazard, inefficient, and ineffective personnel work.

The construction of a classification plan requires analysis of every position or job in the city government for which the plan is being devised. Positions which require performance of substantially the same duties and carry about the same degree of responsibility are grouped together to form a class. Each class is given an appropriate title, e.g., junior stenographer, senior chemist, or principal accountant, and a written specification describing the class then is prepared. This specification includes the title, a description of the duties and responsibilities which characterize the class, typical examples of the work which is done, and a statement indicating the minimum qualifications, training, and experience which are required for holding positions within the class.

The classes which have been established may in turn be grouped together in several ways. A *series of classes* consists of classes marked by similarity with respect to the general character of duties but differing from one another in the matter of rank, i.e., the degree of responsibility which is carried. For instance, the general line of work may be accounting and the series may comprise the following classes, viz., principal accountant, senior accountant, and junior accountant.

Another type of grouping is the establishment of *services*. A service includes all classes which are related because of the fundamental nature of their functions. Thus a distinction is recognizable between professional and scientific, sub-professional, custodial, clerical-mechanical, and clerical-administrative-fiscal services, or between clerical, custodial, legal, engineering, public health, educational, and other functional services.

Following the establishment of classes and class specifications, the next step is to allocate each position to the proper class. This task is easy enough with respect to most positions, but troublesome in regard to borderline cases. Employee dissatisfaction is likely to be generated in connection with the allocation process. An appeal procedure should be provided in order to permit each dissatisfied employee to state his case.

The position-classification plan as prepared by the personnel agency is submitted to the council for adoption by ordinance. This action does not mean that the original plan remains in effect permanently. Changes constantly occur in the structure and functions of municipalities and the classification scheme must be kept up-to-date at all times. Continuous collaboration on the part of the personnel agency and the operating departments is essential to the realization of this objective.

#### COMPENSATION AND RETIREMENT PLANS

**Compensation Plan.** A satisfactory compensation policy adds to the attractiveness of public service, enables the city to retain the services of competent employees, and boosts the morale of the entire working force. Contented employees who enjoy some degree of economic security are likely to do far better work than an underpaid personnel. Moreover, the government as an employer should set an example of fair play and decency in the matter of employer-employee relations.

The adequacy of a pay plan is determined by several considerations. In the first place, it is desirable to establish salary and wage levels in line with living costs and in harmony with those maintained by the better type of private concerns in the community in which the government operates. The city should be able to compete successfully with private interests in order to secure the services of capable persons. Comparatively few able individuals will contemplate a public service career if it necessitates a financial sacrifice on their part.

A second consideration is fairness in compensation as between different categories of employees and the individuals within a particular class. The controlling principle should be "equal pay for equal work." Morale is effectively destroyed by marked differences in the compensation of employees who are doing substantially the same work and carrying practically the same responsibilities.

Finally, the pay plan should be devised with the financial resources of the community in mind. If unduly high compensation be paid, insufficient money may be available for other expenses involved in governmental operations and the burden borne by the taxpayer may become great enough to arouse his antagonism to the point of opposing the maintenance of socially necessary services at adequate standards.

Position-classification is an indispensable aid to observance of the principle of equal pay for equal work. Maximum and minimum salaries are readily established for each class of position, with gradations of pay

between these upper and lower limits. Equitable compensation as between classes also is more easily achieved as a consequence of position-classification. The *series of classes* is particularly helpful in this connection.

Salary standardization along the lines indicated works out with fairness to employees. A competent person who enters the service at the lowest level in a certain class is able to obtain advancements in salary up to the class maximum. Thereafter he will have to win promotion to a higher ranking class in order to improve his financial status. Sound practice requires that the lowest compensation in a given class be higher than the top salary in the class which ranks immediately below it.

One of the most important responsibilities of the central personnel agency is to develop a satisfactory compensation plan and keep it up-to-date. Close cooperation with the chief executive and budgeting authorities obviously is essential and the final adoption of any plan requires affirmative action on the part of the city council which controls the purse strings.

**Retirement System.** The establishment of a proper retirement system is desirable for a number of reasons. It adds to the attractiveness of public service, promotes the elimination of persons who no longer are fit by reason of old age or disability, increases the opportunities for promotion in the case of younger employees, and insures some means of support for individuals who have served the public faithfully, but have reached the end of their working days. The government and the public are benefited by the favorable effects on the quality of governmental service. Public employees gain the advantage of some degree of economic security for themselves and their dependents.

The number of cities having retirement systems is steadily increasing. Of the 1072 cities over 10,000 in population, 89.5% have systems covering all or part of their employees. Complete coverage is reported by 598 of these urban communities. Most of the municipalities without a plan are those with a population under 25,000. In fact, only four cities above 25,000 have failed to establish some sort of retirement system. Many municipalities have their own plans but a fairly large number, 393 of those with more than 10,000 inhabitants, participate in state-wide systems.<sup>14</sup> Twenty-eight states have created state-administered systems covering municipal employees other than those connected with the schools, and four have systems extending to only firemen and/or policemen. Participation in the state plan is optional for cities in 24 states and compulsory in eight. All but three of the latter provide compulsory coverage merely for policemen and/or firemen.<sup>15</sup>

Retirement systems are distinguishable from one another in at least two fundamental respects. One basis of distinction is the source from which necessary funds are obtained. Under the *non-contributory* system the government provides the money without any direct contribution from the employee. Indirectly, the employee bears part of the burden inasmuch

<sup>14</sup> *The Municipal Year Book, 1948*, p. 123, Table 6.

<sup>15</sup> *Ibid.*, pp. 115-116, Table IX.

as salary and wage rates are affected. A *wholly contributory* system is one which is maintained solely from contributions by employees plus such gifts to the pension fund as may at times be made by interested parties. A third plan calls for contributions from both the government and the employees. This *partly contributory* system is generally considered to be the most desirable. Expenses are shared by all who benefit in one way or another from the adoption of a retirement policy. The plan is based on a combination of two principles, viz., social insurance and individual saving and sharing in the cost of protection. ✓

From the standpoint of the policy pursued in determining the amount of annual contributions for the maintenance of the retirement system, the two types are the *cash disbursement* and the *acturial reserve* plans. Under the former, the financial burden for each year is fixed by the total payments due to beneficiaries, i.e., current contributions equal current obligations. Although this plan is simple and also safe in that no fund has to be guarded against mismanagement, it usually is considered unsound for municipalities because outlays become increasingly heavy as the years pass by and eventually the burden becomes so great that the system collapses for financial reasons.

Under the acturial reserve plan, payments into a general fund are made periodically in an amount which is determined by calculations based on the number of employees, their age distribution, retirement ages, disability risks, interest earnings of the fund, and the size of the benefits which are to be paid. A system of this type, if founded on sound acturial computations and periodically revised in consideration of changes in staff and in compensation rates, insures ability to meet all obligations as they fall due. It also is equitable as between different generations of taxpayers and employees.

An adequate retirement system provides for various benefits, viz., superannuation benefits which are paid because of retirement on account of age; disability benefits which become payable when employees retire permanently because of accidents or ill health; and death benefits. In the case of death or disability, benefits usually are payable irrespective of occurrence in line of duty or otherwise, but the amount paid ordinarily is smaller under the latter circumstance.

Among the many details which require settlement in devising a retirement system are the proper age of retirement for different classes of employees, the weight to be given to length of service, the amount of benefit to be paid, the method of payment, safeguards against fraud in connection with disability, and provision for refunding contributions in cases of resignation or dismissal from the service.

For the purpose of administering a retirement system, the usual practice is to organize a board of trustees and to provide it with an executive officer or secretary. It is desirable that both the city government and its employees be represented on this board, with the former having controlling authority. Arrangements also should be made for periodic sur-

veys of the system by an expert actuary. The proper rôle of the central personnel agency is to participate in the planning of a satisfactory retirement policy, to urge its adoption by the proper authorities, and to observe its operation.

The establishment of a retirement plan for small municipalities presents a special problem because of the limited number of their employees. Affiliation with a state system affords a satisfactory solution in those states which have extended the privilege of participation to municipalities. Other alternatives include cooperative arrangements with other local units, the taking out of insurance policies with private companies, or the establishment of a savings fund to which the municipality and its employees contribute and from which each employee at the time of retirement receives the amount which has been credited to him.

Another possibility is extension of the Federal Social Security Act to state and local employees. However, the type and scale of benefits now provided for under this Act are inadequate from the standpoint of the objectives which are sought in the establishment of a public retirement system.

#### RECRUITMENT, EXAMINATIONS, CERTIFICATION OF ELIGIBLES

The personnel agency's primary function in the process of selecting employees is to prepare lists of eligibles from which a choice is made by the proper appointing authority, viz., the chief executive or department heads. Among the many activities involved in the discharge of this function are canvassing the personnel market for satisfactory applicants (recruitment), the administration of suitable examinations for determining the qualifications of candidates, the grading and weighting of the various tests which are given, the rating of those who have taken the tests, and the certification of eligibles to the appointing authority.

**Recruitment.** An important preliminary to the giving of examinations is the encouragement of applications on the part of persons of capacity and character. Merely posting a notice on a bulletin board in the city hall or on telephone poles is clearly an inadequate procedure. The personnel agency should take positive steps to direct attention to and arouse interest in public service opportunities in general and in examinations for different classes of positions. A variety of techniques are available.

Lectures, radio announcements, articles in newspapers and periodicals, advertisements, and special bulletins may be used for the purpose of conveying information concerning the advantages of public service, available openings, and the holding of examinations.

Proper contacts should be maintained with such sources of personnel as high schools, colleges, labor unions, and professional associations. Letters may be sent to persons whose positions bring them in touch with numerous potential applicants and also to presumably qualified individuals who are likely to become candidates if directly approached. Adequate publicity with

respect to the time and place of examinations, the titles and duties of positions, minimum qualifications, compensation, the nature of examinations, and the application procedure is essential.

A carefully devised application form is particularly helpful. It should be relatively simple, but at the same time provide sufficient information to enable the personnel agency to eliminate applicants who lack the minimum qualifications required for candidacy.

**Examination.** The next step in the selective process is examination. According to purpose, the three general types of examination are capacity, achievement, and physical tests. Written tests of the short answer or the essay type may be used to measure general intelligence, personality traits, special aptitudes, and acquired knowledge. Oral tests, i.e., personal interviews, have some value as a means of appraising personality, character, speaking ability, appearance, and poise. Their chief utility is in connection with positions which involve public contacts and the supervision of subordinates.

The essence of character tests is an appraisal of letters of recommendation, an investigation of the applicant's record in previous employments, and a checking of his reputation with persons who know him or know about him. A practical performance examination is a type of achievement test which involves the actual doing of particular types of work, e.g., typing, taking dictation, or brick laying. The physical test may be merely a medical examination for the purpose of ascertaining the health and physical condition of the applicant or it may take the form of special tests for strength and agility, as in the case of prospective policemen and firemen.

The proper character and combination of specific tests depends on the class of positions for which an eligible list is to be prepared. If a battery of tests of different types be given, the personnel agency must decide on the relative importance of each in determining the final rating of candidates. For most positions the examinations are competitive<sup>16</sup> and the names of those who pass are placed on eligible lists in the order of their rating, unless the law provides that preference in some form be given to certain favored groups, e.g., war veterans.

Practices of this type violate the principles of the merit system. Their abandonment in the interest of fairness and administrative efficiency is urgently needed. Veterans' preference is provided for in various ways, viz., by adding a specified number of points to a veteran's score, by giving credit for military service, or by placing veterans at the head of the list regardless of the quality of their performance in comparison with that of other applicants.

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<sup>16</sup> In some cases only non-competitive or pass examinations are required. These tests frequently are used when vacancies are filled by promotion or for certain high grade positions to which application of the competitive principle is deemed inadvisable. Competitive tests usually are taken by all applicants at the same time and place. If so, the examination is referred to as being of the "assembled" type. If not, the appropriate descriptive term is "non-assembled."



**Certification.** Whenever a vacancy occurs in a position which is open to competition, the personnel agency certifies the names of eligibles to the appointing authority. The law may require certification of the highest person on the list, the three highest (the most common requirement), the five highest, or sometimes the entire list. Practice varies in this respect. The appointing authority usually interviews certified persons before making an appointment. In the event that none prove satisfactory to him for reasons deemed adequate by the personnel agency, additional certifications are made.

The person finally appointed usually serves for a probationary period, e.g., six months, which represents the final phase of the testing process. During this time the appointee may be dismissed at the pleasure of the appointing authority. "On the job" testing of this type is particularly valuable as a check on the efficacy of the other types of examination which have been utilized.

#### PROMOTIONS AND TRANSFERS

**Promotions.** The problem of promotions is one of the most troublesome to be solved in the field of personnel administration. A sound policy insures observance of the merit principle, provides an incentive for efficient and effective work, and raises the morale of municipal employees. The inadequate handling of promotions opens the door to favoritism, discriminations, and various spoils practices.

Merit undoubtedly should be the controlling consideration in making promotions. Unfortunately, its measurement presents the usual difficulties. The examination technique is sound in principle and either non-competitive or competitive promotional tests are given in many jurisdictions. In type, these tests correspond to those already discussed in this chapter. However, factors other than performance on examinations should be taken into consideration.

Employees as a group usually attach considerable importance to length of service, i.e., seniority, and some weight perhaps should be attached to this factor. Nevertheless, seniority never should be the sole consideration. Its value is at best secondary. Another basis for promotion in the case of candidates within the service is performance on the job. A satisfactory and properly administered service rating system is useful in this connection. However, a high rating for a certain class of position does not necessarily signify that the incumbent will do equally well in a position of higher rank with different duties and responsibilities. Still other criteria for promotion are performance in a training program and over-all education and experience.

Some consideration probably should be given to the judgment of the appointing officer. In fact, unrestricted discretion in the making of promotions usually is favored by the latter. Such a plan may work satisfactorily in small organizations which afford opportunity for adequate contact with subordinates, but in the larger municipalities the appointing authority is unlikely to possess the information which is requisite if the principle of merit is to prevail.

Finally, as in connection with original entrance into the service, the promoted employee should serve satisfactorily for a probationary period before his appointment to a higher post becomes permanent.

The discussion so far has assumed that promotions will be made from within the ranks of municipal employees. Such a system is "closed" in type. The alternative is to adopt an "open" system under which outsiders as well as persons within the service may compete for high positions on the basis of appropriate tests of fitness.

A closed plan is advantageous in many respects. It helps to place public service on a career basis by insuring opportunity for movement to higher positions, guarantees that higher positions will be filled by persons who have had experience in serving the public, creates good will on the part of employees, and tends to promote higher standards of achievement.

The open system broadens the field from which selections may be made and permits the introduction of new blood into the service as a means of offsetting any tendencies toward complacency and the development of an undesirable type of bureaucracy. It proves advantageous if the total number of employees is small and if their quality is mediocre. Much depends on the effectiveness of methods of selection for entrance at low levels and on the success which a municipality has had in attracting competent persons to its service.

**Transfers.** Transfers occur when an employee is shifted from one position to another in the same class, but not necessarily within the same department. Various considerations give rise to transfers. They often are made in order to find the proper place for a competent employee whose original placement has proved unsatisfactory. Another purpose is to provide training in different types of work or to afford opportunity to become familiar with various branches of the municipal service. Transfers also are resorted to in order to meet fluctuations in work loads, to make adjustments in personnel as a consequence of changes in organization and work methods, and to revive the interest of employees who suffer from the monotony of routine jobs.

The personnel agency should devise and supervise satisfactory transfer policies and keep an adequate system of records for the purpose of facilitating desirable shifts in personnel. It also should be on guard to prevent misuse of the transfer privilege by authorities who desire to circumvent established promotion procedures.

#### SERVICE RATINGS

The purpose of a service rating system is to appraise performance on the job in a fair and dependable manner. Such an appraisal, if reliable, proves useful in connection with many phases of personnel management. It constitutes evidence which merits consideration in dealing with promotions, demotions, transfers, advancements or reductions in compensation, dis-

cipline and separations from the service. Moreover, it helps to keep the working force on its toes and benefits the employee by revealing his strong and weak points and enabling him to achieve self-improvement. Service rating systems also furnish information which proves useful in checking the efficacy of original selection methods and in formulating in-service training programs.

The greatest obstacle to be overcome in rating employees is devising ways and means of minimizing the subjective factor. Appraisals of the quality of work almost always involve the passing of judgment by superiors on the performance of subordinates. Every effort should be directed toward the attainment of ratings which are as objective and as unprejudiced as possible. The best chance of realizing the aim of objectivity is in connection with work of the type which may be rated on the basis of production records or by means of the administration of periodic tests.

These methods of evaluation usually are applicable only to jobs of a routine and repetitive character. Typing, filing, and sorting are examples of activities which may be appraised in terms of units of work of a standard quality per unit of time, e.g., number of pages typed per hour, number of errors, and the appearance of work.

As a rule, however, governmental positions require the rating of such qualities as attitude, industry, ability to get along with others, cooperativeness, loyalty, resourcefulness, initiative, and knowledge of work. These and other qualities have an important bearing on the value of an employee to the organization of which he is a part. Personal judgments seem inescapable in appraising traits and characteristics of this type.

A great variety of service rating systems have been devised with the aim of increasing the degree of objectiveness of appraisals. None of them is purely objective in character. Limitations of space permit merely a brief description of two of the most widely used plans.

The *graphic rating scale* is a method which involves the listing of a variety of traits or behaviors in combination with a description of the differing degrees in which each trait may be possessed by an employee. For example, the trait of "reliability in the execution of assigned tasks" is accompanied by descriptive phrases or terms denoting the degree of its possession, viz., "greatest possible reliability"; "very reliable"; "reliable"; "doubtful reliability"; "unreliable." The supervising officer checks the phrase which he considers applicable to the employee and the over-all service rating of the latter then is determined by transforming the qualitative judgments concerning various traits into appropriate quantitative terms.

The *Probst* rating system is characterized by the listing of about 100 traits or modes of behavior which are pertinent to employment. Examples are "lazy," "slow moving," "quick and active"; "minor physical defects," "serious physical defects"; "good team worker," "not a good team worker"; "uses poor judgment," "generally uses good judgment," "always uses good judgment"; and so on. Each of two or three supervising officers separately checks the traits descriptive of the employee being rated. The final scoring

method is to evaluate the checked items by the addition or subtraction of the numerical values which are attached to the various descriptive phrases.

Each of these systems, as well as others which are in use, has its strong and weak points. Whatever the plan, it is exceedingly important that rating officers be properly instructed as to its use and that their interest be adequately stimulated. Employees, too, should understand the system by which they are rated. Enlightenment and guidance are among the most significant responsibilities of the personnel agency with respect to service ratings.

### IN-SERVICE TRAINING

The systematic training of public servants has been a much neglected phase of personnel administration, but interest therein is growing and marked progress has been made in recent years. In-service training now is recognized as an important function of management.

The broad problem of training has two major aspects, i.e., pre-entry and post-entry training. Pre-entry training is obtained by individuals before entrance into the public service. It is largely the responsibility of the various educational institutions which function throughout the United States, i.e., public and private schools, colleges, universities, and other educational agencies. Although governments as employers do not participate directly in providing such training, they have an undoubted interest in the facilities which are available, in the character of the training which is provided, and in the effect of pre-entry preparation on the personnel supply from which public employees are recruited. Post-entry training is received by persons who hold governmental positions. The planning and administration of proper in-service training programs is chiefly the responsibility of the government itself. Its task is to train older employees as well as new recruits.

The training given to new recruits is appropriately described as "vestibule" training. Its objective is to orient newcomers and to instruct them in the duties and techniques of their employments. One method of training is exemplified by the police and fire schools maintained by various large cities. The period of schooling varies from a few weeks to three months or even longer. Other methods of breaking-in green hands are apprenticeships, especially in connection with skilled trades, internships which emphasize orientation and involve shifting the employee from one unit or division to another over a suitable period of time, and training on the job conducted by the new employee's supervising officer.

The training of old hands is accomplished through a variety of methods. Its primary objectives are to achieve greater efficiency and effectiveness in the performance of work and to prepare employees for promotion to higher positions. This type of training may occur on or off the job and may assume the form of individual or group instruction. The methods which are used include conferences, lectures, demonstrations, courses, seminars, discussion groups, guidance and instruction by supervising officers, inspections, field trips, correspondence courses, rotation of assignments, supervised reading,

and similar techniques. The appropriate method of training depends on objectives and the class of positions for which training is given.

The bulk of in-service training is undertaken by the city's supervisory and administrative personnel. It therefore is essential that these officials be trained in the art of instructing others. A variety of organizations outside the government also participate in in-service training programs. Among them are public schools, universities, leagues of municipalities, professional associations of public officials, and the federal and state governments.

Zone or regional schools for various types of officials, e.g., policemen, firemen, and assessors, are conducted by leagues of municipalities in many states, e.g., the New York State Conference of Mayors and Other Municipal Officials and the Virginia League of Municipalities. Under the George-Deen Act, the national government provides funds for in-service training to be distributed and expended under the guidance and direction of state boards for vocational education.

The primary function of the central personnel agency is to provide leadership in the training field, to formulate plans, to give advice and assistance to the operating departments, and to secure full cooperation on the part of employees and supervising officials. Employee participation in the development of satisfactory training programs is particularly desirable. The personnel agency also should assume responsibility for administering the types of training which may be centralized to advantage instead of being left in the hands of operating departments.

#### SEPARATIONS FROM THE SERVICE

Separations from the service fall into two broad categories, temporary and permanent. The former occur because of lack of work or insufficient funds and the chief problem to be solved is the order of lay-off. Permanent separations may be the result of death, resignation, retirement, or an exercise of the removal power. The question of proper procedure for making dismissals from the service is highly controversial in character.

**Temporary Separations.** In principle, the controlling consideration in making temporary lay-offs should be relative efficiency. The judgment of superior officers may loom large in this connection, but service ratings constitute evidence which should be weighed carefully in those jurisdictions having a satisfactory rating system. An alternative to the efficiency criterion is seniority. The last to be employed are the first to go in the event that a reduction in the working force becomes necessary. Lay-off on the basis of length of service usually is favored by employees. It is widely used because of its administrative simplicity and its popularity.

The selection of one or the other of these two policies or some combination of the two is determined in part by the class of position. In the case of unskilled labor, for example, the seniority rule is both practicable and reasonably fair.

Persons who are laid off because of lack of work or funds should be placed on reemployment lists maintained by the personnel agency. These registers usually are given a short-time priority over other eligible lists in making appointments when conditions justify an increase in staff.

**Permanent Separations: Removals.** The removal of employees for the good of the service and in particular for disciplinary reasons requires the establishment of procedures which will safeguard the interests of the government as an employer and at the same time protect the employee against unjustified dismissals due to political or religious considerations, personal prejudice, or errors of judgment attributable to misinformation. Various procedures are in use throughout the United States.

If emphasis be placed on the desirability of upholding the authority of superior officers in their relations with subordinates, final decision in making removals is vested in the appointing officer, but if the primary consideration be security of tenure for employees, provision usually is made for review and final determination by some independent agency. Many specific procedures are the result of an effort to reconcile these conflicting points of view.

In some jurisdictions removals may be made at the pleasure of the superior officer. Under such circumstances the only safeguards against unfair removals are the good sense and decency of the removing official, firm establishment of the merit tradition, and strict adherence to the merit principle in making appointments. The incentive to removals for political reasons is checked if the appointing authority is obliged to choose a successor from eligibles certified by the personnel agency.

Final decision on the part of the superior officer may be combined with procedural restraints of different types which are designed to check abuses. One of these is the requirement that the employee be presented with written charges, be given an opportunity to answer, and be entitled to a public hearing if he so requests. Publicity is the primary aim of this type of restraint. Another arrangement requires that the officer vested with removal power refer the case to the personnel agency for investigation and recommendation before actually making a dismissal. A third plan vests initial and final action in the superior officer but permits the employee to appeal to a permanent board or to a special committee after the first step has been taken. These bodies usually are composed of representatives of management and the employees. Following the presentation of a recommendation by the board or committee, the superior officer makes the final decision.

Another type of arrangement vests final authority in the matter of removals in an agency other than the superior officer. Usually this body is independent of the chief executive and the line departments.

Under one such plan, the independent agency, ordinarily a civil service commission which is placed beyond the control of the chief executive, tries all removal cases which arise. The superior officer initiates proceedings, the commission hears the evidence presented by the former and by the

employee, and thereafter the commission decides whether the employee is to be dismissed or reinstated. Another plan differs from this one in but one respect, viz., the commission tries the case only if the employee decides to appeal from the action taken by the superior officer.

In some jurisdictions the employee may carry his case to the courts. Ordinarily the latter merely may review the procedure which has been followed and determine the sufficiency of the cause, but under some laws the entire case is subject to reconsideration on its merits. In that event, the judgment of the courts may be substituted for that of the superior officer in regard to all aspects of the controversy.

The primary objection to procedures which place the power of final decision in an independent trial board or in the courts is that the authority of the superior officer is impaired. If the employee be reinstated, he returns to his position in the face of his superior's opposition. Under such circumstances future relations between the two are likely to be unsatisfactory. In order to avert this situation, the practice in some jurisdictions is to place the employee on a re-employment list instead of restoring him to his original position.

Another evil of trial by an independent agency is that superior officers often find themselves placed on the defensive and subjected to unrestrained attack by the employee's counsel. After several such experiences higher officials become reluctant to institute removal proceedings and undesirable employees are retained in the service.

Generally speaking, procedures under which the superior official ultimately determines the fate of the employee are preferable to those which permit him to be overruled. Restraints designed to insure proper publicity or arrangements for investigation and recommendation by a board or special committee provide sufficient protection against abuses of the removal power, and at the same time safeguard the interests of managing officials in maintaining proper control over subordinates.

The removal of an employee for disciplinary reasons constitutes a drastic remedy which should not be invoked until other modes of discipline have proved ineffective. Among the disciplinary techniques at the disposal of a superior officer are "a chill in the atmosphere," oral or written reprimands, the assignment of extra work, reduction in pay, suspension without pay, fines, loss of seniority rights, and assignment to less desirable work. The "firing" technique rarely should be the first resort of superior officials.

#### EMPLOYEE ORGANIZATIONS

The organization of public employees in the United States dates back to the last quarter of the nineteenth century. Before 1880, few associations of public servants had been formed, but thereafter a substantial number came into being, especially within the federal postal service. Teachers, firemen, and policemen were among the first local occupational groups to organize. Their early associations usually were created for benevolent purposes. Al-

though the unionization movement at the state and local level gained momentum after 1910, the greatest progress has been made in recent years. Organization on an increasingly large scale is anticipated for the future.

One type of public employee organization is the professional association. Its primary purposes are to promote the profession which its members pursue, to facilitate the exchange of information and experiences, and to foster higher administrative standards and practices. Examples of this type of association are the International City Managers' Association, the Municipal Finance Officers' Association, the Civil Service Assembly of the United States and Canada, the International Association of Chiefs of Police, the International Association of Fire Chiefs, and the American Society of Municipal Engineers.

Another variety of organization is the union which may be of the craft or industrial type. Its major objectives are: (1) to promote the economic betterment of its members by securing higher compensation and adequate pensions, favorable hours of work, and satisfactory working conditions; (2) to improve the quality of public service; (3) to secure the adoption, extension, and maintenance of the merit system, and (4) to bring about comradeship and a feeling of unity among its members.

Some unions are purely local, e.g., the Municipal Employees' Society of Chicago and the Milwaukee Government Service League, whereas others are affiliates of such national or state-wide organizations as the American Federation of State, County, and Municipal Employees (AFL); the United Public Workers of America (CIO); the International Association of Fire Fighters (AFL); the New Jersey Civil Service Association; and the Civil Service Forum of New York.

The extent to which municipal employees have become organized is indicated roughly by the figures for cities with a population over 10,000.<sup>17</sup> Slightly more than three out of five report the existence of one or more employee organizations other than craft unions of skilled municipal workers. Organizations are found in 90% of the cities with a population in excess of 25,000. For those within the range from 10,000 to 25,000, the proportion is very much smaller, viz., 47.3%, and although no figures are available for communities under 10,000, the percentage probably is even lower.

Perhaps the most important activity of employee organizations is representation of their members in dealings with state legislatures, city councils, and administrative officials. They employ the various tactics used by other pressure groups in making known their views concerning pending legislation and in bringing pressure to bear on legislative bodies. In their relations with administrators, they attempt to adjust grievances, to promote security of tenure for their members, to bring about the adoption of satisfactory personnel policies and regulations, to secure better wages and working conditions, and to obtain recognition of the principle of collective bargaining.

Early in 1948 the number of cities over 10,000 which reported formal

<sup>17</sup> *Ibid.*, p. 124, Table 7.



written agreements with unions was 50 out of a total of 755 which responded to a questionnaire sent out by the editors of the *Municipal Year Book*.<sup>18</sup> Few of these cities had agreements covering all employees.

The agreements extended to such matters as the deduction of union dues, wage and salary rates, the length of the work day and the work week, and grievance procedure. A substantial number of municipalities which do not enter into formal written agreements maintain informal relations with union officials and meet with them to discuss wages, working hours, and other conditions of employment. The principal reasons for the limited use of written agreements are official opposition to employee unions and collective bargaining, the restricted bargaining power of administrative functionaries, and uncertainty concerning the legal authority of municipal corporations and the legal status of employee organizations.

Three important issues in the public personnel field are the right of employees to organize, to engage in collective bargaining, and to strike. The law pertaining to these matters remains sketchy and confused. Reluctance to recognize these rights is due in some measure to the peculiar characteristics of public employment.

As compared to private employees, public servants enjoy a variety of advantages. They possess greater liberties and receive more legal protection against various forms of mistreatment. Moreover, governments are non-profit institutions of an indispensable type. Inasmuch as many of their functions are essential to the maintenance of an orderly community life, preservation of their supremacy and guarantee of the continuity of their operations are deemed to be matters of primary importance. Fear is expressed in certain circles that conferment of rights of the type under consideration might have consequences detrimental to the public interest.

The right to organize is commonly conceded, but in some jurisdictions it has been denied to certain groups of employees, e.g., policemen and firemen. If not denied, it sometimes is restricted by prohibiting affiliation with outside labor unions. Affiliation is opposed on the ground that it will have the effect of dividing the loyalty of employees and giving them excessive political power.

The feasibility of collective bargaining in the governmental field is affected by the fact that many features of public personnel policies are prescribed by laws which are binding on both administrators and employees. Administrative authorities lack the freedom of negotiation which collective bargaining presupposes. They are unable to make decisions which bind either legislative bodies or the people in general who are the ultimate employers. However, obstacles to limited collective bargaining are by no means insurmountable.

In the case of municipal corporations, the question of legal competence always arises. These bodies politic possess only such powers as have been delegated to them, and in the absence of adequate enabling acts, their authority to engage in collective bargaining invariably is open to doubt. Even-

<sup>18</sup> *Ibid.*, p. 125.

tually, legislative action and judicial decisions will clarify the legal atmosphere. Even so, the desirability of collective bargaining probably will remain a controversial issue for some time to come.

The right of public employees to strike so far has failed to receive general legal recognition. It has been denied by law in some jurisdictions (ten states)<sup>19</sup> and denounced by officials in many cities. Most important of all, however, is the fact that most employee organizations voluntarily have disavowed this right in recognition of the adverse social effects of an interruption of governmental services. Nevertheless, strikes of municipal employees have occurred on numerous occasions. One of the earliest and most widely publicized was the Boston police strike of 1919. Of cities with a population over 10,000, 16 experienced strikes in 1947 and 43 during 1946, including San Francisco, Cleveland, Detroit, Milwaukee, and St. Paul among the larger cities.<sup>20</sup>

Opposition to the right to strike continues to be strong. Strikes against the government are condemned because of the serious consequences of cessation of vital functions like law enforcement, fire protection, and water supply. Since governments operate in a non-competitive field, no substitutes are available in the event of a discontinuation of services because employees as a group refuse to work. From the standpoint of both the government and the public, the uninterrupted performance of necessary governmental functions represents a primary need.

As previously noted, public employees themselves usually subscribe to this point of view. At the same time, however, the right to strike may be defended as the only ultimate remedy in situations which are characterized by a consistently arbitrary and exploitative attitude on the part of governmental officials and politicians toward employees.

The proper solution for the strike and other employee problems lies in the adoption of fair personnel policies and in the establishment of orderly and effective procedures for the settlement of controversial questions. Machinery for the promotion of cooperative management-labor relations should be installed in all jurisdictions. Work stoppages represent a crude and costly way of settling differences in both public and private fields, and the day probably will come when so primitive a device as the strike no longer will be looked upon with approval even as an emergency measure.

#### CIRCUMVENTION OF THE MERIT SYSTEM

The establishment of a merit system by law fails to guarantee observance of merit principles in practice. Evasion of legal requirements is achieved readily enough by ingenious spoilsmen unless the proponents of the merit idea maintain eternal vigilance and fight for their cause whenever occasion demands. Their battle is likely to be a losing one without the support of the general public. Brief consideration will be given to some of the ways and means by which spoilsmen circumvent civil service requirements.

<sup>19</sup> *Ibid.*, p. 99.

<sup>20</sup> *Ibid.*, p. 126; *The Municipal Year Book*, 1947, p. 132.

The first point of attack is likely to be the personnel agency. If persons hostile to the merit principle are placed in control of the civil service commission, the door is opened to numerous abuses. Time and again spoilsmen and their supporters have gained domination of the very agency through which merit policies are supposed to be administered.

Even if this agency be controlled by persons who believe in sound personnel practices, the political pressure brought to bear on them may become so great that their resistance to the demands of spoilsmen eventually is overcome. This state of affairs is likely to develop in the absence of effective backing on the part of the public.

Another way of hamstringing the personnel agency is to withhold the money which is necessary to enable it to discharge its functions in a proper manner. If the spoils interests are in control of the council, this indirect method of circumvention may be resorted to without difficulty. Again, the attitude of the public is a determining factor.

With the connivance of the personnel agency and its staff, the merit principle may be evaded in a variety of ways in spite of legal provisions. One maneuver is to increase the number of positions in the exempt class. It will be recalled that the personnel agency has authority to take such action if the giving of examinations is considered inadvisable for certain types of positions.

Another practice is to assign a substantial number of offices to the non-competitive class. If perfunctory "pass" examinations then are given, the appointing authority is free to select almost any person he has in mind without apparent violation of the merit principle.

In the case of competitive classes, the objectives of the spoilsman may be gained through improper advertising of examinations so as to confine competition to a favored few, through unfair examinations and discriminatory grading and rating, by disclosing test questions to political pets, and by tolerating cheating or the use of substitutes.

A widely used mode of circumvention involves abuse of the privilege of making provisional appointments without examination. Arrangement for such appointments is justifiable in connection with a sound personnel policy inasmuch as occasions arise when positions have to be filled immediately even if no eligible lists are available.

The creation of new employments, an unanticipated need for expansions in staff, or a dearth of applicants for examination create emergency situations which warrant the making of provisional appointments pending the preparation of eligible lists. Appointments of this type are restricted in duration, commonly to two, three or four months, but in some jurisdictions the provisional appointee may be re-appointed for successive limited periods.

In communities in which such action is legally permissible, it is a simple matter for the spoilsman to renew temporary appointments an indefinite number of times. If renewals be prohibited by law, a common practice is to disregard the established time limits. A safer way to evade merit requirements through abuse of the privilege of making provisional appointments

is to prepare examinations containing questions which can be answered readily only by a person who has had experience on the job. The provisional appointee thus gains an unfair advantage over his competitors when examinations finally are given. A related practice is to give credit for experience or personal fitness in rating candidates. This policy usually enables the provisional appointee to obtain a sufficiently high rating to qualify him for permanent appointment.

Personnel agencies with foresight and adequate staff and funds are not likely to be caught without eligible lists except in genuine emergencies. Those which are willing to connive with the spoilsman often find themselves in this predicament. Sometimes they go so far as to accommodate their political friends by abolishing perfectly good lists on the ground that they are out-of-date and inadequate.

Another method of defeating the merit principle is by misuse of the promotion and transfer system. Appointments to low grade positions are followed by rapid promotion with little regard for demonstrated merit. If competitive promotional examinations be given, the path is cleared for political favorites by bringing overwhelming pressure to bear on persons with higher ratings. The latter are persuaded to waive their opportunities for promotion. In the event that promotional tests are of the pass or non-competitive type, the process of evasion obviously is simplified. If there be no tests of any kind, barriers to promotion on a political basis are non-existent.

In some jurisdictions, disguised promotions are effected through resort to transfers. Transfers are supposed to be made only to positions within the same class, but if the personnel agency fails to establish proper controls over transfers or ignores what is happening, concealed promotions are easily made by higher officials with political motives.

The ultimate remedy for evasions of the merit system lies in the development of a strong public demand for satisfactory personnel policies. Carefully drawn legal provisions and a personnel agency devoted to the fight against the spoilsman undoubtedly are helpful. Without adequate community support, however, comparatively little can be accomplished.

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*CHAPTER XXIV*  
**MUNICIPAL FINANCE**

*Outline*

**Legal Restrictions on the Financial Powers of Municipalities**

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THE PROPER solution of financial problems is one of the major responsibilities of city authorities. Serious consideration needs to be given to the question of what the community can afford in the way of governmental services and important decisions have to be made concerning the relative significance of different functions. It also is necessary to select effective and equitable methods of raising money and to develop ways and means of insuring the efficient expenditure of available funds. The fact that most contributions in support of governments are compulsory rather than volun-

tary in character places public officials under a special moral obligation to see to it that the tax burden is distributed fairly and that expenditures are made wisely and effectively.

#### LEGAL RESTRICTIONS ON THE FINANCIAL POWERS OF MUNICIPALITIES

The financial powers of municipal corporations are far more restricted than those of the national government and the states. Limitations of various types are found in state constitutions, statutes, and charters. Limited legal competence is one of the reasons why municipalities need outside assistance to overcome some of the financial difficulties which confront them from time to time.

In the first place, city authorities are forced to rely on the sources of revenue which have been placed at their disposal by the state. They are unable to raise funds by any and all methods which might seem desirable from the standpoint of productivity and ease of administration. Only a few states, e.g., Pennsylvania and California, have conferred a fairly broad taxing discretion upon them. Many lucrative sources of revenue have been pre-empted by the national government and the states. Moreover, lack of authority to levy specific taxes is not the only handicap under which cities operate in raising money. Their limited territorial jurisdiction prevents them from making effective use of certain types of taxes which are quite feasible for governments whose authority extends over larger areas.

A second type of restraint on the revenue-raising power of municipalities takes the form of restrictions on the extent to which particular taxes may be utilized either for general or for specified governmental purposes. Most limitations of this character pertain to the general property tax which continues to be the most important single source of local revenue. Property tax restrictions are imposed by the constitutions or general laws of 40 states. In some of the remaining states, restrictive special legislation applies to particular cities.

Property tax limitations differ in type. In some states, e.g., West Virginia and Ohio, a maximum permissible aggregate rate on real and/or personal property is established by law. This over-all rate fixes the maximum tax burden of property irrespective of the number of governmental units exercising jurisdiction over it. The combined tax rates of the county, the city, the township, and the school district, for example, may not exceed the specified maximum.

An over-all limitation of this type necessitates allocation of some proportion of the allowable rate to each of the governmental units affected. This apportionment is made in some states by statute and in others by an administrative board created for the purpose.

A more common and less drastic variety of restriction prescribes the maximum permissible rate for general purposes for each unit of local government. Cities are allowed to levy a property tax up to the stipulated maximum rate and counties, townships, and school districts enjoy the

same privilege. The ultimate burden on property depends on the number of taxing jurisdictions which may levy a tax upon it.

In a few states limitation is achieved in a different way by specifying the permissible percentage of increase each year over the preceding year's tax levy, e.g., an increase not to exceed five percent. Among other forms of restriction are limitations in terms of the maximum amount per capita, the maximum aggregate amount which may be raised, and the maximum allowable rate of a tax for some specified purpose or purposes.

The stringency of limitations of the foregoing types usually is lessened by making exceptions for various purposes, e.g., debt service and particular public improvements. Ordinarily, too, extra levies are permissible for certain purposes if the voters of a municipality give their approval. In some states the exceptions are sufficiently numerous to detract materially from the effectiveness of general limitations.

Debt limitations on cities are imposed by constitutional or statutory provision in all of the states. They usually are expressed in terms of a percentage of the total assessed valuation of property. For a city with an assessed valuation amounting to \$5,000,000, for example, a 5% limit permits an indebtedness not to exceed \$250,000. The percentages vary from state to state and range from a low of one-fifth of 1% (Georgia) to as high as 20%. For most states the limit falls between 5% and 15%. The limits sometimes vary for different classes of cities.

As a rule, provision is made for exemptions from the general limitation. Common examples are special assessment bonds, refunding issues, and debts incurred for specified public improvements. In about three-fourths of the states, revenue bonds are placed in the exempt category.

The borrowing power of municipalities is restricted in a number of other ways, viz., by requiring that bonds be of the serial type, by limiting the term for which debts may run, e.g., 20 or 40 years, by fixing the maximum permissible rate of interest, e.g., at 5% or 6%, and by prohibiting the incurrence of indebtedness for specific purposes, particularly the use of public credit to aid private interests. The law on the subject of debt limitations is so confused and complicated that even the specialist in this field experiences difficulty in appraising the situation in particular states.

The laws of the state in which a city is located directly limit its borrowing operations. Indirect restrictions arise from the legislation of states in which such important large-scale buyers of bonds as banks, insurance companies, and other investing institutions are located. Laws regulating the investments of these buyers affect the marketability of municipal securities. Consequently, if a municipality is to dispose of its bonds with ease, it must pay heed to the conditions which certain states, e.g., New York, Pennsylvania, and Massachusetts, have laid down with respect to investments by institutions of the type which have been mentioned.

Substantive limitations on revenue raising and borrowing powers are not the only restraints on the discretion of municipalities in regard to financial matters. In all states certain expenditures are required by law.



Some expenditures are mandatory in character because the state compels municipalities to render specified services, but others are mandatory with respect to the amount as well as the object of expenditure, e.g., salaries fixed by statute. Investigations which have been made in several states show that mandatory disbursements constitute a high proportion of total expenditures in many cities, e.g., an average of 27% in 17 third class cities of Pennsylvania and from 23% to 70% in four cities selected for study in the state of New York.<sup>1</sup>

The procedures to be observed in the exercise of financial powers also are prescribed by law. Many states require the use of specified forms for budgeting, fix the date for the beginning of the fiscal year, establish the time for tax payments, prescribe delinquent tax collection procedure, regulate the assessment of property for taxation, and control local accounting practices. Among procedural restrictions pertaining to the incurrence of indebtedness are regulations compelling the giving of notice and the holding of public hearings in connection with the passage of ordinances providing for the issuance of bonds, the requirement of a popular vote on proposed bond issues, and rules stipulating that contracts for the purchase of bonds be awarded to the highest bidder.

As pointed out in an earlier chapter, municipalities in an increasing number of states are subjected to various forms of financial supervision by state administrative authorities. In jurisdictions like New Jersey, North Carolina, and Indiana, administrative controls over local finance have been developed to a considerable degree.

The foregoing sketch of imposed restrictions shows that municipalities are by no means masters of their own fate in the financial field. Many of the restraints to which they are subjected by external authority are desirable in character. Some are objectionable. Whether good or bad, however, cities are legally obliged to abide by them. The favorable and unfavorable consequences of tax and debt limitations will be considered in the subsequent discussion of revenues and indebtedness.

## REVENUES

General and selective property taxes constitute the chief source of revenue of cities. They produce slightly more than three-fifths of the general revenue receipts of cities with a population of 25,000 or over. Next in importance are state administered-locally shared taxes and grants-in-aid from the federal government, the states, and other local units. Not quite one-fifth of the total of general revenue receipts is derived from these sources. The remaining fifth is accounted for by miscellaneous taxes, charges for current services, special assessments, and a variety of other revenue.

Table V shows the percentage of general revenue receipts obtained from

<sup>1</sup> E. W. Carter, *Mandatory Expenditures of Local Governments in Pennsylvania* (Philadelphia, The Author, 1934), p. 115; Third Report of the New York State Commission for the Revision of the Tax Laws, *Depression Taxes and Economy Through Reform of Local Government*, Albany, 1933, pp. 159-165.

each of the several major sources as classified by the Bureau of the Census. Operating revenues from the proprietary and economic undertakings of cities are excluded except in so far as these city-owned and operated enterprises contribute to general revenue receipts.

TABLE V <sup>2</sup>

PERCENTAGE OF GENERAL REVENUE RECEIPTS OBTAINED FROM MAJOR SOURCES BY CITIES WITH 25,000 OR MORE INHABITANTS: 1945 AND 1946

Major Source	Percentage	
	1945	1946
Taxes .....	72.6	70.7
General and selective property .....	63.1	60.3
Sales and gross receipts .....	4.7	5.0
Licenses, permits, and other (stamp taxes, bank stock taxes, poll taxes, income taxes, etc.) .....	4.8	5.3
Aid received from other governments .....	17.9	18.7
State .....	16.6	17.6
Other (Federal and Local) .....	1.3	1.1
Charges and miscellaneous .....	9.5	10.6
Charges for current services .....	4.8	5.1
Special assessments for capital outlay .....	.9	1.1
Contributions from enterprises .....	2.1	2.1
Other and undistributed (fines, forfeits, donations, unclaimed money, interest earnings, etc.) .....	1.7	2.3
Total .....	100.0	100.0

The table presents an over-all picture of the relative importance of different revenue sources. Of course, the proportions vary for individual municipalities and for the several population groups of cities. Formerly, property taxes were relied on to a comparatively greater extent than at present. Aid from other governments, particularly the state, is a revenue source which is increasing in significance. Non-property taxes and service charges also are being utilized more extensively than in the past.

**General Property Tax.** The general property tax is the most lucrative source of revenue for cities and other units of local government. Its leading position is unlikely to be challenged in the foreseeable future. However, the tax load on property is becoming relatively lighter because of resort to other methods of obtaining revenue.

A general property tax is one which is imposed on real and personal property according to value. The tax rate is expressed in terms of mills per dollar or dollars per \$1,000 of assessed valuation. If the rate be \$20,

<sup>2</sup> Table V is based on data obtained from Bureau of the Census, *City Finances: 1945* (Washington, Government Printing Office, 1947), p. 5, Table 2, and *Compendium of City Government Finances in 1946* (Washington, Government Printing Office, 1948), p. 6, Table 2, and p. 16, Table 11.

for example, a person owning property assessed at \$5,000 is obliged to pay a tax amounting to \$100. As a rule the same rate applies to both real and personal property, but in some jurisdictions personal property is separately classified and taxed at a lower rate.

The reasons for classification are the desire to avoid double taxation, the difficulty of discovering personal property, much of which is intangible in character, and the fact that the earnings of such property often are so low that application of the same rate which applies to real property tends to be confiscatory. A lower rate causes more people to declare the ownership of such personalty as they possess.

Not all property is subject to taxation. Exemptions are provided for in all states and the consequence is a material reduction in the yield of the general property tax for cities. In the neighborhood of one-sixth of the total assessed value of real property in the United States enjoys exemption from taxation. For 52 cities with a population of more than 100,000, the value of exempt real property in 1936 amounted to 22% of total real property values.<sup>3</sup> In 1947 the average exemption for 117 cities was 17.3% of the property carried on the tax rolls.<sup>4</sup> The type of property which is exempted in one or more states includes cemeteries, homesteads, and real estate owned by the federal and other governments, churches, educational institutions, charitable organizations, veterans and veterans' organizations, and industries of certain types.

In some instances the amount to which exemption extends is limited, and sometimes, as in the case of veterans, personal as well as real property is exempted. The entire question of exemptions requires re-examination and steps should be taken to eliminate abuses which have developed.

An important phase of the administration of the general property tax is determination of the value of the property. Laws generally stipulate that property is to be assessed at full market value, but in practice assessments usually fall below this level. Comparatively few jurisdictions have adopted efficient and effective assessment methods. Assessors usually are chosen by popular vote. They rarely possess the technical knowledge which sound assessment requires and usually resort to haphazard methods of evaluation in which the element of guess-work looms large. Political pressures often affect the making of appraisals.

The essentials of a satisfactory assessment system include: (1) appointment of assessors, preferably on the basis of competitive examinations; (2) the separate assessment of land and buildings; (3) the adoption of the unit foot as a standard of quantity and the use of depth, corner influence, plottage, and other rules which have been developed by expert assessors for the determination of land values; (4) the classification of buildings according to type of construction and the use of appropriate unit factors of building value; (5) the use of tax maps and land value maps; (6) the

<sup>3</sup>Bureau of the Census, *Value of Exempt Real Property in Fifty-Two Cities* (Washington, Government Printing Office, 1936), p. 1.

<sup>4</sup>"Tax Rates of American Cities", *National Municipal Review*, Vol. XXXVII, No. 1, January, 1948, pp. 16-33, at p. 18.

district, block, and lot system of indexing property; (7) adequate records of various types, including information concerning sales, mortgages, rentals, leases, and other evidence of property values; (8) a satisfactory form for declaration of the ownership of personal property; (9) provision for a board of review to hear appeals from the decisions of assessors. Limitations of space preclude an extensive discussion of proper assessment methods.

The tax rate on general property commonly receives a great deal of publicity. Comparisons between different cities often are made, and politicians point with pride to a rate which is lower than that of other cities or than that of previous administrations in their own city. Preventing an increase in the tax rate ordinarily is hailed as a great achievement.

Actually, the tax rate, unless supplemented by a great variety of other information, has no significance as a barometer of municipal efficiency and economy. It casts no light on many matters which should be taken into consideration in passing judgment on the quality of city government.

For one thing, the rate in one municipality may be higher than in another merely because of differences in the basis of assessment. Let us assume that the same amount of revenue is to be obtained from the general property tax in two communities and that the total market value of all property in each is the same. In that case, if one of these communities assesses at 50% of market value and the other at 100%, the rate in the former will be twice as high as in the latter.

Again, the tax rate gives no indication of the proportion of total revenue receipts obtained from this source. One city may raise only 60% of its money through the general property tax, whereas another may rely on it to the extent of 75% of its total revenue receipts. The former may keep its rate down, temporarily at least, by pursuing the unsound practice of borrowing as a means of financing current operations, or it may tap various other sources of revenue. About 100 cities, to cite an extreme example, finance all of their operations through the high service charges of city-owned and operated utilities like electric power and light plants.

Moreover, the tax rate reveals nothing about the nature, extent, and quality of the services which the city government renders for the residents of the community within which it functions. Nor does it cast light on the conditions with which municipal officials have to contend in particular urban areas.

Without information of the foregoing types, comparisons between tax rates almost invariably are misleading. The primary value of the tax rate is to show the amount of taxes an owner of property is called upon to pay in a particular community.

The extensive reliance on property taxes has brought about demands that greater use be made of other sources of revenue. Property owners advocate a widening of the tax base because of their conviction that they bear an unfair share of the burden of taxation for municipal purposes. Whether they do or not is a controversial question. However, apart from considera-

tions of equity, it has become apparent that cities will have to obtain money from other sources if they are to meet the service demands which continue to be placed upon them, especially in the face of rising costs and the necessity of paying higher salaries and wages.

Property-tax restrictions have forced the issue, but even if they were to be removed, the need for tapping other sources of revenue would remain unchanged. There are practical limits beyond which increases in property tax rates become inexpedient if not destructive. Moreover, a sound revenue system requires more than one dependable and lucrative source of income.

Property tax limitations of the type described earlier in this chapter are attributable to various causes. Chief among them is the desire to lighten the tax load of property owners, especially during and immediately following periods of depression. In times of prosperity and expanding governmental services, the tendency is to relax restrictions by increasing the limits or by making numerous exceptions thereto. Other considerations which have led to property tax limitations are extravagant governmental expenditures, graft, misgovernment in general, and the desire to force a widening of the tax base in order to reduce the proportion of taxes collected from owners of real property.

Proponents of restrictions, particularly drastic and inflexible ones like the over-all limits which are found in nine states, usually argue that rigid limitations will prove beneficial in a variety of ways, viz., by compelling governments to operate more efficiently and economically, by eliminating unnecessary services, by promoting improved assessment and tax collection methods, by bringing about a reallocation of functions and financial responsibilities between the state and local units, and by forcing a widening of the tax base along more equitable lines.

Generally speaking, legally imposed property tax limitations have failed to fulfill the claims of their sponsors. They haven't brought about efficiency and economy in government and they haven't led to the reform of state-local revenue systems. Nor have they limited property taxes in an effective manner. Too many exceptions have had to be made in order to relieve hard-pressed cities.

On the other hand, tax limitations have produced various harmful and undesirable effects. Severe restrictions have forced many municipalities to curtail or to discontinue socially necessary services. Depriving a community of needed services represents a destructive rather than a constructive measure of economy. Again, cities have been led to resort to the unsound financial practice of borrowing for the purpose of meeting ordinary expenses.

Another undesirable by-product of property tax limitations has been increased use of methods of raising revenue which are regressive in their effect. Sales and amusement taxes, for example, bear most heavily on persons with limited incomes.

Moreover, tax limitation has been a cause of the creation of additional units of local government for the purpose of providing particular govern-

mental services. This practice nullifies the effect of tax restrictions if each new unit may levy taxes up to the established limits. The result is a pyramiding of tax rates. Rigid over-all limits of the type adopted by nine states prevent this mode of evasion.

Two primary weaknesses of tax limitations of the prevailing type are their rigidity and their inadequacy as a means of promoting better and more efficient government. Uniform restrictions fail to take into consideration the needs and resources of particular municipalities. A certain maximum rate may be suitable for some cities, but prove highly unsatisfactory for others. Moreover, limitations in terms of rates and amounts have no bearing on the purposes for which money is spent or on the efficiency of spending.

A negative approach to the problem of achieving economical and effective government is doomed to failure. Far more can be accomplished through emphasis on improved organization, better personnel policies, and sound fiscal management. Furthermore, rigid legal limitations are inferior to state administrative supervision of the financial activities of local units.

**Other Types of Taxation.** The general revenue receipts of municipalities from taxes other than the general property tax constitute a small proportion of the total, viz., about 10%. A great variety of these taxes are levied. Some of them are rather widely used but others have been resorted to by comparatively few municipalities.

Sales and gross receipts taxes are defined by the Bureau of the Census as taxes which are based upon the volume or value of transfers of goods or services, upon receipts therefrom, upon gross income, or upon the use, storage, or consumption of goods. Included in this category are: (1) *general sales, use, or gross receipts taxes* levied on retail, wholesale or manufacturers' sales of commodities and services in general; (2) *special sales, use, or gross receipts taxes* on selected commodities and services. The latter include taxes on tobacco products; alcoholic beverages; gasoline; admissions to motion pictures, sporting events, and other forms of entertainment; and on public utility services like transportation, telephone, telegraph, and power and light.

The licenses and permits category in Table V covers taxes which are exacted from corporations and individuals for the right to exercise a business or non-business privilege. These taxes may be levied at a flat rate or may be measured by such bases as capital stock, capital surplus, number of units, or capacity. They are not based directly on transactions, gross or net income, or the value of property.

Licenses or permits for engaging in specified activities may be required either for revenue or for regulatory purposes. Among the taxes which the Bureau of the Census classifies under this heading are flat rate or graduated fees exacted from manufacturers, wholesalers, and retailers of alcoholic beverages without reference to sales or to property values; motor vehicle and operators' license fees; amusement license fees; taxes on the privilege of engaging in businesses and occupations; parking meter charges; fees

charged in granting licenses or permits for the private use of streets, e.g., extensions beyond building lines or the erection of poles; fees paid on the occasion of obtaining licenses or permits for the construction of buildings and the installation of equipment; flat rate license fees required of public utilities without reference to sales, gross receipts or property values; and fees charged in connection with the issuance of animal licenses.

The item "other" under the heading of "licenses, permits, and other" in Table V refers to mortgage registry and documentary stamp taxes, taxes on bank stock and vessel tonnage, poll taxes, and municipal income taxes. Comparatively few municipalities levy income taxes, but the number is increasing. Among the larger cities which tax incomes are Philadelphia, Toledo, Washington, D. C., and Columbus, Ohio. The St. Louis income tax was declared invalid early in 1947. Philadelphia's income tax is a 1% levy on the salaries and other compensation of residents, on the earnings of non-residents for work done or services rendered in the city, and on the net profits of trades, businesses, professions, and other enterprises operated by residents or conducted by non-residents within the city limits.

Special assessments for capital outlay represent a special type of tax which appears in Table V under the heading "charges and miscellaneous." A special assessment is a compulsory contribution levied against real property in return for a special benefit in the form of an increase in value attributable to the construction of public improvements like street pavements, sewers, water supply lines, and parks.

The use of special assessments requires determination of a number of matters, such as the extent to which the benefit from an improvement is special rather than general, the size of the area in which property receives a special benefit, and the degree to which particular parcels of property are benefited. Different methods are used in determining the special assessment to be levied against specific properties. One of them is frontage, another superficial area, and a third combines superficial area with distance from the permanent improvement.

**Grants-in-Aid and State Administered-Locally Shared Taxes.** Assistance from other governments is a revenue source of major importance. Table V shows that most of it now comes from the states. As pointed out in an earlier chapter, the federal government provided cities with substantial aid during the depression years. Since that time federal assistance has dwindled in amount, but it still is furnished for certain purposes, either directly (airports) or indirectly through the states (highways). The federal government also makes payments in lieu of taxes on certain federally-owned property which is exempt from local taxation.

Grants-in-aid represent money which is given to cities by other governments for either specific or general purposes without association with any particular method by which the granting government obtains funds for the purpose of distribution. A state administered-locally shared tax is one which is levied and collected by the state and then distributed in whole

or in part to local units on the basis of some formula. The distinction between these two forms of assistance tends to disappear in practice.

Grants-in-aid usually are conditional in character and ear-marked for specific purposes. The states often require municipalities to match the grants with some proportion of their own funds and to maintain prescribed minimum standards in the performance of the functions for which aid is given. Among the most important functional fields within which aid has been forthcoming are education, welfare, highways, and health. The objectives sought by the state may be the raising of minimum standards of administration, the redistribution of financial resources from wealthy to needy communities, and the provision of monetary relief for local units during periods of financial distress, e.g., depressions.

The sharing of specific state-administered taxes with local units is a method of providing municipalities with funds from sources which local units are unable to tap efficiently and effectively or because of lack of authority. Income, inheritance, gasoline, liquor, sales, chain store, and corporation taxes, for instance, are best suited for administration by governments with more extensive jurisdiction than that which is possessed by municipalities. Costs of administration are greatly reduced, evasions are curtailed and taxpayers are spared the inconvenience of making returns to two or more governments.

The principal taxes which states now share with local units are gasoline, sales, liquor, and motor vehicle taxes. The basis of sharing may be population, assessed valuation of property, a specific proportion of the amount which has been collected in the local area to which a share is allocated, or some combination of factors of the foregoing type. Shared taxes sometimes are earmarked for particular purposes. Earmarking has the disadvantage of limiting local freedom in making expenditures and hinders the allocation of monies among municipal services on the basis of their relative importance.

The grant-in-aid system is considered superior to the local sharing of state administered taxes in two respects.<sup>5</sup> To begin with, it is more flexible from the standpoint of its adaptability to changing economic circumstances. Tax yields fall off during periods of depression and increase greatly in times of prosperity. Consequently, the sharing of a tax means that municipalities receive the least aid at the time when it is most needed. Grants-in-aid are readily adjustable to the different phases of the business cycle. Stabilization of local revenue is a desirable objective.

The other advantage of the grant-in-aid is that it is a more adequate method for providing assistance on the basis of individual need. If minimum standards in certain fields are to be maintained in all municipalities, communities with restricted wealth will have to be given greater subsidies than are granted to localities with more adequate resources.

Whatever the form of state assistance, more systematic policies are desirable than those which have developed in most states up to the present

<sup>5</sup> Committee on State-Local Relations, *State-Local Relations* (Chicago, The Council of State Governments, 1946), pp. 133-134.



time. The need for systematization is especially great because state aid seems to be essential to a permanent solution of the revenue problems of local units.

New York State recently adopted a type of plan which may provide the answer to the problem of state-local financial relations. This plan is characterized by the following features: (1) direct grants on a per capita basis are made to local units for general purposes; (2) the grants are to be given each year at the same rate; (3) a stabilizing fund is set up to insure the same amount of aid during bad as well as good times; (4) increased assistance is provided for specific functions, viz., highways, education, welfare, and health; (5) the state budget is divided into two parts: one for state purposes and the other for local aid, with appropriate revenues assigned for the support of each part.<sup>6</sup> The New York plan simplifies the system of state assistance, preserves local discretion in the making of many expenditures, and promotes the stabilization of local revenues.

Welcome as state assistance may be to local units, including cities, it carries with it two risks. There is the danger of a curtailment of local autonomy because the granting of monetary aid usually is accompanied by various conditions and restrictions. The state feels justified in interfering in local affairs to the extent necessary to insure proper expenditure of the money it provides. The other risk is that help from the state will prolong the survival of various inefficient and outmoded governmental units by postponing needed reforms in systems of local government, e.g., consolidations and the reallocation of functions.

A suggested alternative to shared taxes is an arrangement under which local authorities would be empowered to add supplemental rates to certain state-collected taxes. The additional revenue would be turned over to the city which had decided to levy the supplemental rate. This proposal has two advantages. Its optional feature preserves local autonomy and takes into account the differing needs of particular cities.

**Charges for Current Services.** In recent years cities have undertaken to increase their general revenue receipts by making charges for certain services which in the past usually were financed out of general funds. Among the services partially or entirely supported in this way are sewerage, refuse collection, weed cutting, snow removal, and the lighting, sprinkling, and oiling of streets.

A good many communities bill property owners for sewerage services. The basis of sewer rentals may be a flat rate, water consumption, the number of plumbing fixtures, sewer connections or rooms, property frontage or the type of property. Refuse collection is another function which frequently is financed on a service-charge basis. Property owners or householders are billed for the collection of one or more classes of wastes, viz., garbage, ashes, and rubbish. Most communities require the payment of a fixed monthly or

<sup>6</sup>H. F. A., "Adequate Finances for Local Government", *Commonwealth*, Vol. I, No. 2, December, 1946, pp. 3-4; Committee on State-Local Relations, *op. cit.*, pp. 136-137.

yearly rate per family or residence. Sometimes the basis of the charge is the quantity of refuse which is collected, i.e., a specified sum per can of garbage or ashes.

**Contributions from Enterprises.** The item "contributions from enterprises" in Table V refers to general revenue receipts derived from such city-owned and operated enterprises as water supply systems, electric power and light plants, gas plants, transportation systems, airports, and port facilities. It represents the difference between payments to the city by its enterprises and the amounts from other sources which the city pays to them.

The operating revenues of city-owned enterprises often are sufficiently high to provide a surplus over and above operating expense, debt service obligations, and capital reserve requirements. A substantial number of municipalities make enough "profits" from the ownership and operation of utilities to cover all or a large proportion of the cost of rendering general governmental services. This policy is criticized as being inequitable because placement of the burden of supporting the city government on the users of utility services disregards the principle of contributions in proportion to ability to pay.

**Requirements of a Satisfactory Revenue System.** Solving the revenue problems of cities is a difficult task which requires cooperative action on the part of the states and municipalities. In fact, the revenue question is one of nation-wide scope. An over-all plan for meeting the money needs of all levels of government (national, state, and local) is necessary for an entirely satisfactory solution of the revenue problem in all of its aspects. Such a plan should be sufficiently flexible to permit adaptation to the peculiar needs of individual cities.

The basic requirements of a good revenue system are: (1) adequacy; (2) equitableness; (3) ease of administration and low administrative costs; (4) convenience for taxpayers; (5) synchronization with the revenue systems of other governments.

A revenue system which fails to provide the amount of money which a government needs obviously is defective. Available sources should be of such a character that adequate funds may be obtained at all times. The quality of equitableness is essential because every individual who benefits in one way or another from the provision of governmental services should bear a fair share of the cost. Particular taxes may fall more heavily on one group than on another, but the system as a whole should distribute the expense burden fairly. Many persons also believe that every person should be required to pay a tax directly to the government. The idea is to develop a tax consciousness which will have the effect of discouraging demands for excessive and extravagant expenditures.

Ease of administration promotes more effective collections and lowers administrative costs. Methods of raising revenue which involve difficulty in making collections encourage evasions and add so greatly to the expense

of administration that the net yield is materially reduced. Convenience for the taxpayer simplifies the work of tax-collecting authorities, reduces attempts at evasion and helps avert the development of a hostile attitude on the part of the taxpayer toward his government. The antagonism of taxpayers is easily aroused in any event and especially if methods of raising revenue require undue sacrifice of time and effort on their part.

Finally, the revenue system of any unit of government should be correlated with the systems of other governments which exercise jurisdiction over the same persons and property. Harmony and balance between related systems are essential to the production of adequate revenues in an equitable manner.

The revenues of cities may be increased in various ways. Attention should be directed toward making the general property tax more productive through better administration, e.g., by improving assessment methods and delinquent tax collection procedures, by reducing the amount of property which now enjoys exemption from this tax, and by relaxing or removing property tax limitations. Again, other sources of revenue may be developed to a greater extent than in the past. The states should see to it that appropriate enabling legislation is enacted. A substantial number of them are so doing. However, the indiscriminate resort to "new sources" may have adverse economic consequences and result in serious inequities. Adequate federal and state assistance should be provided in a systematic manner. This remedy for the revenue difficulties of cities appears to be the most promising of the many which have been proposed or tried from time to time. Cities are unable to meet growing revenue needs from their own resources.

Another approach to the problem of financial relief for cities is by cutting down expenses. Improved organization and procedures, a sound personnel policy, and the use of modern methods of administration will produce greater efficiency and effectiveness in the performance of socially necessary functions—thereby reducing costs. Consideration also should be given to the reallocation of functions and financial responsibilities between the states and local units. The states can lend a helping hand by refraining from imposing mandatory expenditures without furnishing satisfactory financial support. Another means of reducing expenses is through elimination of units of government which have outlived their usefulness, especially in metropolitan areas. Constructive measures of economy of the foregoing and other types are just as important as the tapping of new sources of revenue as a means of mitigating the financial plight of cities.

#### INDEBTEDNESS

Municipal corporations almost invariably are granted the right to borrow money as a means of financing their activities. If exercised under legitimate circumstances, the authority to incur indebtedness represents a valuable supplement to the revenue-raising powers of municipalities. Unfortu-

nately, city officials often have misused this useful power. Borrowed money must be repaid from the proceeds of the various revenue sources which city governments are authorized to tap. In other words, debt is incurred in anticipation of income which is obtainable in other ways.

The total indebtedness of a municipality never should be permitted to become so great as to require excessive payments from current revenues for debt service. Abuses of the borrowing power eventually lead to impairment of a city's credit and to the practical nullification of its authority to incur debt.

**Principles of Sound Borrowing.** Generally speaking, a municipality is justified in borrowing only if it is faced with extraordinarily large expenditures for permanent assets or if it is confronted with an immediate need for funds which are momentarily unavailable. In the first circumstance, long-term borrowing is warranted; in the second, the debt should be retired in a very short time. Except for temporary borrowing under special conditions, the incurrence of indebtedness to meet current expenses is a practice which is absolutely unjustifiable.

Short-term borrowing<sup>7</sup> refers to indebtedness incurred for a brief period of time, usually for a year or less. The necessity for such borrowing can be reduced to a minimum through efficient fiscal management and sound procedures.

Temporary loans frequently are made in anticipation of tax and other revenue receipts. The need arises if tax payments fall due too long after the beginning of the fiscal year or come in slowly for some reason or other. Coordination of the tax collection and spending years, the payment of taxes on the installment plan, and the building up of a reserve fund for use pending revenue collections represent ways of obviating the necessity for loans for this purpose.

Another occasion for temporary borrowing occurs if unforeseen emergencies require expenditures in excess of the amounts anticipated at the time the budget was prepared and adopted. The next year's budget should include provision for immediate repayment of the loan. Finally, temporary borrowing sometimes is warranted as a means of obtaining funds in anticipation of the sale of duly authorized bonds for the financing of a permanent improvement.

Long-term indebtedness should be confined to the financing of relatively permanent improvements which occur infrequently and to the meeting of emergencies of an extraordinary character. Borrowing to buy unusually expensive equipment sometimes may be justified. The propriety of issuing bonds to meet the cost of improvements depends on the size of the city, its revenue resources, its normal capital outlay, and the character of its improvement program.

<sup>7</sup> Short-term borrowing assumes a variety of forms, viz., short-term certificates and bonds, notes and bank loans, warrants in excess of available cash, and unpaid bills and claims. See A. E. Buck, *Municipal Finance* (New York, The Macmillan Co., 1926), pp. 481-483.

Practically all communities regularly construct improvements of various types. For instance, they may lay approximately the same number of sewer and water pipes every year and annually pave so many miles of streets. Such regularly recurring outlays, although for capital purposes, represent expenses which should be charged to current revenues. On the other hand, improvements of an expensive type which occur only occasionally are appropriately financed through the issuance of bonds. Examples are sewage treatment plants, water filtration systems, large parks, subways, auditoriums, and stadiums.

A project which represents an unusual and costly undertaking for a small community may constitute a normal capital outlay for a large one. For example, municipalities of small size find it necessary to construct school buildings only on infrequent occasions and the cost involved is great in relation to the total of expenditures normally financed from their general revenue receipts. A sharp increase in tax rates to cover the expense of construction would place too heavy a burden on the taxpayers. Under such circumstances the borrowing of money on a long-term basis clearly is justified.

An extremely large city, on the other hand, may undertake the construction of a school building nearly every year. In that event the project falls in the category of regularly recurring improvements which should be financed on a pay-as-you-go basis from the proceeds of ordinary revenues.

Every community should endeavor to apply the pay-as-you-go principle to as large a part of its permanent improvement program as possible without bringing about sharp fluctuations in the tax rate from year to year. One way of achieving this objective is to ascertain the normal annual capital outlay over a period of years. This amount should be treated as an ordinary expense and financed without incurring indebtedness. Requirements greatly in excess of this figure for any given year may be met by long-term borrowing.

The planning of a five- or ten-year improvement program is an essential step toward the development of either a partial or complete pay-as-you-go policy. Cities which have been in the habit of issuing bonds to pay for permanent improvements cannot shift overnight to a pay-as-you-go basis. An abrupt change in policy would necessitate too drastic an increase in tax rates. The transition should be gradual. As the experience of Milwaukee and other cities demonstrates, the pay-as-you-go idea is far from visionary. The financing of permanent improvements need not be placed completely on a pay-as-you-go basis. For many cities, especially the smaller ones, such a policy would be impracticable.

Too many communities act on the assumption that all permanent improvements should be financed by borrowing. This attitude is partly attributable to the conviction that those who benefit from an improvement should share the cost. If a given project has a useful life of 20 years, for example, considerations of equity are said to require a method of financing which will spread the expense over future as well as present beneficiaries.

Although the plan of payment by those who benefit is sound in principle, it is not the only way of achieving equity as between successive generations of taxpayers. A pay-as-you-go program may work out just as fairly if the annual outlay for permanent improvements remains reasonably constant from year to year. The amount expended in a given year measures the burden of that year's taxpayers, and with careful planning major variations in the year to year burden can be avoided. If the taxpayers of today foot a bill for the benefit of the taxpayers of tomorrow, the latter will be doing the same for the taxpayers of the day after tomorrow. Equity as between different generations of taxpayers is primarily a matter of comparative burdens. Whether the taxpayers' contribution is used to finance one improvement or another is a matter of minor importance.

Another point of view concerning equity is that those who decide on an improvement should pay for it. Some projects may prove to be unwise and unsound. It is unfair to subject future taxpayers to the risk of having to pay for the mistakes of the past.

One of the most impressive arguments along equity lines is that considerations of fairness require that the financial condition of a municipality be kept on a sound basis at all times. This objective should be controlling in the choice of methods of financing governmental activities. If achieved, no generation of taxpayers will have ground for complaint about unfair treatment.

A cardinal rule to be observed in long-term borrowing is that the life of the bond issue never should extend beyond the useful life of the project or the equipment for which debt is incurred. The issuance of 30-year bonds, for example, to pay for a street pavement which will have outlived its usefulness in 15 or fewer years is an extremely unsound practice. It not only is inequitable, but eventually leads to financial disaster. Additional borrowing for a new pavement becomes necessary before the cost of the old one has been met. The proper term for a debt depends on the purpose for which it is incurred. A 30- or 40-year issue may be justifiable in the case of parks or water supply and sewerage systems which will prove adequate to meet the needs of a community for at least that length of time. Ordinarily, debts for pavements should extend for no longer than 10 or 15 years, preferably for the former period. In the case of equipment, the debt, if justified at all, normally should run no longer than five years.

The emergencies for which long-term borrowing is warranted are those of a type which rarely occur in the lives of communities. An earthquake, a flood, a tornado or a fire may prove so disastrous as to require the expenditure of huge sums for relief and rebuilding purposes. The same situation may arise as a consequence of war, e.g., the destructive bombing of cities. A different type of emergency is one which occurs as a result of a serious and protracted economic depression. The falling off of revenues and the necessity of providing relief for the unemployed may create a condition for which borrowing affords the only remedy unless adequate assistance

be forthcoming from county, state or federal governments or unless sufficient reserve funds have been accumulated during prosperous years.

Long-term borrowing may become necessary in some municipalities for the purpose of escaping the consequences of bad fiscal management. If the operating deficit (floating debt) of a municipality becomes excessive because of resort to unsound financial practices, the issuance of bonds may be the only practicable means of meeting liabilities and getting off to a new start. It goes without saying that there ordinarily is no excuse for permitting the development of conditions of this type.

An objective of wise management of fiscal affairs is to keep indebtedness as low as possible, not only for the sake of economy, but to preserve the credit of the municipality. A partial or complete pay-as-you-go policy reduces costs through the avoidance of interest payments and at the same time helps to maintain credit at a point which enables the municipality to borrow at lower interest rates on occasions when the incurrence of indebtedness is really necessary.

The evils of excessive and unwarranted borrowing and the unfortunate experiences of many municipalities during the depression of the 30s have brought forth the suggestion that reserve funds be established during periods of prosperity when revenue yields are high in order to provide funds when revenue receipts decline. Another argument in support of the reserve fund idea is that communities should develop the habit of saving for contemplated improvements as a means of implementing transition to a pay-as-you-go policy or as a substitute therefore in the case of small municipalities in which most public improvements represent an extraordinary expenditure.

About half of the states have authorized the creation of reserve funds by municipalities. A major objection to this plan is the risk that reserve funds, like sinking funds, will be mismanaged or used for purposes other than those for which they were created.

**Types of Bonds.** Municipal bonds may be classified from the standpoint of various distinguishing features. These include the nature of the security behind the bonds, the methods used in transferring title and making interest payments, and the character of the arrangements which are made for redemption. All of these features have a bearing on the marketability of bonds and on the methods of debt administration.

(1) **Security Feature.** *General-obligation bonds* are secured by the full faith and credit of the municipal corporations. All of its revenue resources are pledged to the fulfillment of the obligation to pay interest and to retire the principal of the debt on the date of maturity. Most of the bonds issued by municipalities are of this type. They have proved attractive to investors.

*Mortgage bonds* are secured by a mortgage on the property of a publicly-owned utility such as a water supply system, an electric power and light plant, or a transportation system. The purpose of their issuance is the construction or purchase of such property. In the event of default, for-

closure proceedings may be instituted and a committee of the bondholders may take over the utility and operate it in satisfaction of their rights as creditors.

*Revenue bonds* are obligations which are payable exclusively from the earnings of a revenue-producing enterprise rather than from the general revenue receipts of cities. Sometimes they also are secured by a mortgage on the property and in that event they fall in the mortgage bond category. Revenue bonds are extensively used as a means of financing such revenue-producing projects as bridges and tunnels, bus systems, housing developments, electric and gas plants, airports, water supply systems, and stadiums.

*Special assessment bonds* are issued in connection with the financing of permanent improvements through the levy of special assessments. If they are secured solely by the special assessments which are to be collected or by the property specially benefited, they are referred to as "special-specials" to distinguish them from "general-specials." The latter are secured by the full faith and credit of the city even though principal and interest obligations are intended to be met in the first instance from the special assessments which have been levied. General-specials are more attractive to investors than special-specials.

**(2) Transfer of Ownership and Interest Payment Feature.** From the standpoint of the method of transferring title and making interest payments, the two basic types of bond are the *coupon bond* and the *registered bond*. Coupon bonds are issued in a form which makes them payable to bearer. Interest coupons are attached to the bonds. The issuing authority remits interest to the person who presents the coupons as they fall due and likewise pays the principal on the date of maturity to the bearer of the bond. Transfer of title from one individual to another is readily achieved through the simple process of delivery. The advantage of bonds of this type is the ease with which they may be conveyed from person to person. Their disadvantage lies in the difficulty of establishing ownership in the event of loss, destruction by fire, or theft.

Registered bonds are featured by the fact that each bond is recorded in the name of the particular purchaser. The issuing authority keeps a register of the names and addresses of owners and mails interest payments to them at regular intervals. If a registered bond be sold, the current owner endorses it and the purchaser transmits it to the issuing authority which records the change of title in the register, cancels the endorsed bond, and delivers a new bond to the person who made the purchase.

From the standpoint of investors, registered bonds are advantageous because of protection against accidental loss and because interest payments are made without the necessity of clipping and presenting coupons. The primary disadvantage is the inconvenience involved in transferring title.

Some bonds are issued as coupon bonds, but may be converted into registered bonds if the purchaser so desires. They are known as *convertible coupons*. Sometimes, too, a given issue may be convertible and re-convert-



ible at the pleasure of owners. The privileges of conversion may add to the marketability of the bonds. As a rule, however, municipalities issue bonds of either the coupon or registered types.

(3) **Redemption Feature.** From the standpoint of the issuing government, one of the most important features of a bond issue is the method of redemption. If the date of maturity of all of the bonds constituting an issue be the same, the bonds are known as *term* or *sinking fund bonds*. At the end of the period for which the bonds were issued, the municipality pays back the entire principal of the debt which was incurred. Interest on the total principal is paid throughout the life of the issue.

In order to meet its obligation to retire the principal, the municipality establishes a sinking fund into which annual contributions are paid. These contributions, together with the earnings of the fund, must be large enough so that the accumulated total equals the outstanding principal by the time the bond issue matures. Obviously, investment of the money in the sinking fund requires the exercise of utmost care in order to avoid losses which would prevent the municipality from meeting its obligation to its creditors.

A *serial bond issue* is featured by the retirement of principal on an installment basis. The dates of maturity of the bonds are so arranged that a certain number are redeemed every year beginning with the first year following the date of issuance. Under this plan the interest burden decreases every year. Different arrangements may be made with respect to the number of bonds maturing at yearly intervals. If equal payments of principal are to be made annually, the issue is of the *straight serial* type.

For example, assuming a 20-year issue of \$500,000 and the issuance of 500 bonds of \$1,000 denomination, 25 bonds would be redeemed every year throughout the life of the issue. The annual appropriation for principal and interest would be largest the first year and decrease each year thereafter because of the reduced interest burden following annual retirement of a portion of the principal.

Sometimes municipalities arrange the redemption of serial bonds in such a way that the annual appropriation for meeting interest and principal obligations is the same in amount every year. In that event the issue is of the *annuity serial* type.<sup>8</sup>

**Serial versus Term Bonds.** Serial bonds are considered superior to term bonds in several respects. The primary advantage lies in the fact that the retirement of principal on an annual installment basis enables a municipality to meet its obligations without the necessity of establishing and subsequently administering a sinking fund.

<sup>8</sup>In the case of *deferred serials*, the first payment of principal is postponed for several years following the date of issue. Generally speaking, this type of arrangement is undesirable even though it may be warranted under special circumstances. Serials are labeled *irregular* if the date of maturity of the bonds constituting an issue is so arranged that installments of principal fall due at intervals of three or five years rather than annually, or that a substantial proportion of the bonds mature during the later years of the period for which indebtedness was incurred.

Past experience has demonstrated that the dangers of mismanagement in the handling of sinking funds are great. Miscalculations often are made concerning the proper amount of annual contributions to such a fund. As a result it is found to be inadequate at the time when the term bond issue matures. The same situation also arises if contributions are deliberately withheld or curtailed, if money is borrowed from the fund but not replaced, or if poor investment of the fund results in damaging losses.

Serial bond issues are free from risks of this type. Interest obligations and the amount of principal to be retired each year are known and provision for an adequate annual appropriation for these purposes is easily made. If a municipality fails to fulfill its obligation, the fact becomes known to creditors immediately, whereas the inadequacy of sinking funds may not be revealed until it is too late to avert serious financial difficulty.

Serial bonds also may be more marketable than term bonds because of the varying dates of maturity. Some investors desire redemption in a short period of time. Others prefer a long-term investment. The flexibility in the maturity of serial bonds affords attractive investment opportunities for a variety of bond purchasers.

From the standpoint of cost, serial bonds have a slight advantage over the term bond issue. Since outstanding principal is gradually retired, the total interest paid to creditors is smaller than the amount which is paid on term bonds. However, comparative cost is affected by such considerations as the rate of earnings of the sinking fund and the length of the period of the bond issue. Moreover, if allowance be made for the time factor, i.e., if the present worth of all future payments of principal and interest be taken into consideration, the ultimate cost to the community of both types of issue is the same.<sup>9</sup>

The advantages of term bonds depend on the efficiency of sinking fund administration and on astute fiscal management. Sinking funds may be invested to good advantage in a municipality's own bonds, provided that the bonds are part of the issue for which the fund was established. The fund also may be utilized for the temporary purchase of bonds of other issues in order to delay their appearance on the bond market until favorable conditions develop. Moreover, a sinking fund may prove useful for short-term borrowing when a municipality is unable to obtain loans on satisfactory terms from banks.

Again, if sinking funds can be invested in safe securities which provide a higher rate of return than the interest payable on the bond issue, the cost of the latter may be materially reduced. Finally, a term bond issue is sometimes preferable to the serial variety because market conditions may be more favorable for the sale of long-term bonds. In spite of possible advantages of the foregoing type, the issuance of serial bonds is a safer policy for most municipalities to pursue.

<sup>9</sup> A. E. Buck, *Municipal Finance*, op. cit., pp. 485-487.

**Limitations on Amount of Indebtedness: Merits and Defects.** The legal limitations on the amount of indebtedness described at the beginning of this chapter were imposed as a result of the excessive and unwise borrowing which municipalities and other local units of government engaged in at various times in the past, especially during the middle and subsequent decades of the nineteenth century. They were resorted to on the theory that a restriction on the maximum permissible debt would prevent local units from borrowing to the extent of impairing their ability to maintain proper standards in the rendition of socially necessary governmental services. Preservation of local credit and the protection of investors in governmental securities were other controlling considerations.

The worthiness of these motives is beyond question. Unfortunately, the prevailing type of limitation has proved defective in several respects. In the first place, the imposition of a debt limit which permits each unit of local government to borrow up to the established maximum fails to afford adequate protection to communities in which two or more local units are functioning. If each of four governments, e.g., the county, the township, the school district, and the city, may borrow up to 10% of the assessed value of property, the maximum permissible indebtedness for the area within which these governments operate is 40% rather than 10%. Overlapping jurisdictions mean overlapping debts in the absence of over-all limitations. This fact has led to the evasion of debt limits by the multiplication of units of government.

A second weakness is the basis of limitation, viz., assessed valuation of property. Property may be assessed at varying percentages of market value and the permissible amount of indebtedness may be raised by the simple expedient of boosting assessed values. Again, property values rise and fall as economic conditions change and consequently the borrowing capacity of municipalities is curtailed during depressions. It is at this time that cities are in greatest need of funds. Moreover, the value of property is a rather undependable indicator of the fiscal capacity of a municipality. A better base would be the average normal revenue receipts over a specified period of time, e.g., five years.

Thirdly, rigid and uniform restrictions disregard the differing financial needs and conditions of individual cities. A limiting rate which is satisfactory for some municipalities may be entirely inadequate for others. Rapidly growing communities with expanding resources present a different case than municipalities which grow slowly or have reached the peak of their development.

Another defect is the fact that the usual type of limitation fails to prevent unsound borrowing practices. No control is exercised over the purposes for which funds are borrowed. Consequently, cities may remain within the limits as to amount and still resort to unwise borrowing, e.g., the incurrence of indebtedness in order to finance current operating expenses.

Finally, general debt limits in most states are less significant than they appear to be because of the large number of authorized exceptions. Even though these exceptions are in many respects justifiable, the haphazard manner in which they have been established is an indication of the absence of a sound and systematic method of debt control.

The regulation of indebtedness may be improved upon in several ways. A maximum limit on a practicable base should be combined with supervisory controls by state administrative authorities. The average annual revenue receipts of a municipality for a period of five or ten years constitutes a suitable criterion of debt-incurring capacity. If this base be used, the amount of indebtedness may be limited by fixing the maximum percentage of income which may be devoted to debt service, i.e., payment of interest and principal, during any fiscal year.

Administrative supervision affords a means of dealing separately with individual cities and of preventing resort to borrowing for improper purposes. It also enables state officials to give advice, furnish guidance, and provide assistance for municipalities in various ways. One way of reconciling local autonomy and state administrative supervision would be to permit borrowing at local discretion up to a limit which is low enough to be safe and to require state approval for the incurrence of indebtedness above this limit. State authorities could grant or deny approval in consideration of the financial condition of a city, its future prospects in the matter of growth and increased resources, the quality of its government, and the purpose for which borrowing is contemplated.

Such administrative supervision would obviate the necessity for complicated legislation concerning exceptions to general limits. The making of exceptions should be left to the judgment of state administrative authorities in conformity with general principles laid down by the state legislature. If the present policy of making legal exceptions to rigid general limits be retained, the law on this subject should be revised in order to achieve simplicity and certainty and to avoid complete emasculation of general limitations on the amount of indebtedness.

#### EXPENDITURES

**Distribution of Expenditures.** The ways in which municipalities spend their income is shown in Tables VI and VII. Both of them are based on data gathered by the Bureau of the Census for cities with a population of 25,000 or over. The classification of expenditures is the one adopted by the Bureau. Proportions rather than amounts are presented because of the greater utility of the former as a means of revealing the comparative significance of different municipal functions from the standpoint of their cost to urban communities.

Although the percentages for particular municipalities and for different population categories of cities deviate from the average, the over-all picture for the 397 cities with 1940 populations over 25,000 is helpful in convey-

ing an idea of the approximate distribution of disbursements by character and by function for individual cities.

One way of classifying general expenditures is by character. The Bureau of the Census distinguishes between operation costs (expenditures for the current maintenance of the general governmental functions of the city), capital outlay, aid paid to other governments, interest on general debt, debt retirement, and contributions to city enterprises and to trust funds, e.g., pension funds. Table VI shows the proportions of general expenditures which are made for each of these types of outlay.

TABLE VI

PERCENTAGE OF GENERAL EXPENDITURES ACCORDING TO CHARACTER FOR CITIES  
WITH A POPULATION OF 25,000 OR OVER: 1945 AND 1946

<i>Character of Expenditure</i>	<i>Percentage</i>	
	1945	1946
Operation (personal services, supplies, materials, contractual services, etc.) .....	73.3	73.2
Capital Outlay (permanent improvements, land, equipment) ....	3.4	5.7
Aid paid to other governments .....	.2	.3
Contributions to trust funds or enterprises .....	7.1	7.3
Interest on general debt .....	5.1	4.4
Debt Retirement .....	10.9	9.2
Total .....	100.0	100.0

Table VII indicates the way in which current operation costs are distributed among the major municipal functions. The largest proportion of expenditures is made for education. In most cities of the United States this service is rendered by a separate unit of government, i.e., the school district, rather than by the general city government.

TABLE VII<sup>10</sup>

PERCENTAGE OF GENERAL EXPENDITURES FOR OPERATION ACCORDING TO MAJOR  
FUNCTIONS FOR CITIES WITH A POPULATION OF 25,000 OR OVER:  
1945 AND 1946

<i>Major Function</i>	<i>Percentage</i>	
	1945	1946
Schools .....	23.2	22.5
Police .....	13.4	13.6
Fire .....	10.1	10.0
Public Welfare .....	9.3	9.5
General Control (support of the legislative, executive, judicial branches; elections; staff services, etc.) .....	8.7	8.6
Health and Hospitals .....	8.5	8.8
Sanitation (collection and disposal of wastes, smoke abatement, control of public nuisances, etc.) .....	8.2	8.5
Highways .....	7.9	7.6
Recreation .....	4.2	4.5

TABLE VII<sup>10</sup>—Continued

<i>Major Function</i>	<i>Percentage</i>	
	<i>1945</i>	<i>1946</i>
Libraries .....	1.6	1.6
Safety functions other than police and fire (protective inspections, censorship of movies, supervision of amusements, flood control, etc.) .....	1.1	1.1
Correction .....	.9	.9
Miscellaneous .....	2.9	2.8
Total .....	100.0	100.0

Table VII excludes expenditures in connection with city-owned and operated enterprises like water supply systems, electric power and light plants, and transportation systems. The operating expenses of these enterprises are met from their operating revenues and from contributions, if any, which the city makes in support of them from its general revenue receipts. In 1946 these outlays amounted to 17.6% of the combined total of general operating expenses and enterprise operating costs for cities with 25,000 or more inhabitants.

If this base be used in calculating the proportion of operating expense allocated to the major functions listed in Table VII, the percentages become smaller than those shown in the table. For example, the proportion for schools falls from 22.5% to 18.5% and for police from 13.6% to 11.1%.

#### BUDGETING

A satisfactory budgetary system is essential to the efficient and effective utilization of the resources which a community is able and willing to devote to governmental purposes. The goal to be achieved is the maintenance of high standards of administration at a minimum cost. Sound budgeting is a means to this end. It preserves an approximate balance between income and outgo and promotes the distribution of expenditures among municipal services according to their relative social importance. The creation of deficits and the wasteful expenditure of funds are largely preventable through proper budgetary practices.

**Nature of a Budget.** A budget is a financial program for a definite period of time, usually one year. It is concerned with revenues as well as expenditures, inasmuch as one of its purposes is to avoid both an excess of spending in relation to income and an excess of income over outlay. Other objectives which necessitate the planning of revenues are the raising of adequate funds in an equitable manner and the avoidance of unsound methods of financing the different phases of the city's expenditure program,

<sup>10</sup> Tables VI and VII are based on data published by the Bureau of the Census in *City Finances: 1945*, p. 6, Table 3, and *Compendium of City Government Finances in 1946*, p. 2, Table 4.

e.g., the borrowing of money as a means of meeting the cost of current operations.

On its expenditure side, a budget is a work program expressed in monetary terms. It shows the amounts of money which the city intends to spend in carrying on its numerous activities. The schedule of expenditures for different services and for various objects necessarily is based on the work which the city government expects to do during the course of the fiscal year.

Ordinarily, the expenditure side of a budget attracts more attention and arouses greater interest than the part of the financial program pertaining to revenues. People are particularly interested in expenditure plans because these determine the weight of the tax load which is to be carried and indicate the nature and extent of the services which are to be provided for the benefit of the public.

The annual or current budget covers the immediate expenditure and revenue needs of the city. Another type of budget is the long-term financial program for a period of five years or even longer. This program is a tentative one which is subject to continuous revision. Each year a part of it is incorporated in the annual budget.

Experience has demonstrated that long-term planning is a very helpful means of enabling a city government to render necessary services year after year without becoming involved in financial difficulties. By looking ahead a number of years, city officials can shape their plans for the current year in the light of probable future needs.

Long-term budgets often are referred to as capital budgets because they are largely concerned with permanent improvement programs and the means of financing them. However, if properly prepared, they are not confined to the planning of future capital outlays, but take into consideration expenditure needs of all types. Budgeting on a long-term basis is a policy of comparatively recent origin which cities are gradually adopting.

**Budgetary System.** The budgetary system consists of the processes and procedures through which the budget is prepared, adopted, executed and audited. A budget is merely a plan. Its quality depends in large measure on the techniques which are pursued in formulating it and its utility on the ways and means of securing adherence to its provisions. A sound plan which is disregarded in practice obviously fails to serve a useful purpose.

The budgetary process involves four principal operations, viz., preparation, legalization, execution, and post-audit. Initial preparation of the budget is a task of great magnitude. It can be discharged satisfactorily only if undertaken by qualified officials in conformity with effective procedures.

After a plan has been prepared, the next step is legalization. The council considers the proposed budget and eventually passes the appropriation, revenue, and borrowing ordinances which are necessary to give effect to the financial program which it favors.

Once the fiscal year begins, the task of executing the legalized plan de-

volves upon the chief executive and other administrative functionaries. Adherence to the plan during the period of execution requires observance of sound procedures and the exercise of effective controls over the spending and revenue-collecting agencies.

The final operation consists of a post-audit of accounts and records in order to check on all financial transactions and to find out if violations of law occurred. This audit enables the council to hold executive officers to account for the way in which they have handled the financial affairs of the municipality.

**Preparation of the Budget.** The responsibility for preparing the budget almost always is vested in the chief administrator under the strong mayor-council and council-manager forms of government. In commission-governed cities, the commission prepares the budget and also legalizes it. The director of finance may perform the duty of compiling the estimates made by individual commissioners for their departments, but the basic responsibility for preparation rests on the commission which functions as a plural executive or administrative board.

In many mayor-council cities, especially those operating under the weak mayor system, the task of preparing the budget is assigned to the finance committee of the council, e.g., Chicago, or to the controller, or to a board composed entirely of administrative officers or partly of administrative officials and members of the council. Milwaukee affords an example of a city in which the budget is prepared by a board of estimate. This board consists of the mayor who acts as president, the comptroller, the city treasurer, the city attorney, the commissioner of public works, the president of the common council, and the members of the council's committee on finance.

Under the New York City charter of 1936, a distinction is drawn between the expense budget and the capital budget. The former is prepared by the mayor and a budget director appointed by him, and the latter by the city planning commission which is composed of six members appointed by the mayor plus the chief engineer of the board of estimate. Both budgets are submitted to the board of estimate for adoption<sup>11</sup> and thereafter are acted on by the city council, which may reduce or delete but not add or increase items in the expense budget and may merely strike out authorizations in the capital budget.

The executive type of budget, i.e., one which is prepared and subsequently administered by the chief executive, is favored by authorities in the field of public administration. Preparation by the chief executive is advantageous in several respects.

<sup>11</sup> The board of estimate is composed of the mayor, the comptroller, the president of the council, and the presidents of the five boroughs. It is required to hold public hearings on both the expense and capital budgets. It may alter the expense and capital budgets in any way but its power to change the latter is subjected to certain procedural restraints, e.g., the requirement of a three-fourths vote to include projects not recommended by the city planning commission.



In the first place, the administrative head is in an excellent position to obtain the information which is required for adequate preparation. He directs and controls the organization which administers the policies of the city government and possesses first-hand knowledge of the needs of the urban community and of the costs involved in rendering municipal services.

Secondly, the chief executive approaches the task of preparation with an over-all point of view. His interests are associated with all departments and not merely one or two. Consequently, he is able to weigh the requests of departments in an impartial manner and to provide for the allocation of funds on the basis of the relative importance of departmental services.

Thirdly, since the chief executive is held responsible for the proper administration of policies, it is only fair that he be given the opportunity to prepare a budget which he considers adequate for administrative purposes. His recommendations may be rejected by the council, but he will at least have had the opportunity to go on record as favoring a certain financial program.

Another reason for granting the executive the power to prepare the budget is that this power strengthens his position as general manager of the administrative forces. Departments are more likely to follow his leadership in the administrative field if their requests for funds require his approval.

Finally, preparation by the chief executive concentrates responsibility in one man. The divided responsibility which characterizes boards and council committees adds to the difficulty of placing the blame for unwise financial planning. It also is very likely to result in unbalanced and improperly coordinated financial programs because of undesirable bargains and compromises between individuals enjoying equal authority.

Charging the chief executive with the responsibility for budget preparation means little in practice unless he is provided with a staff for the purpose of furnishing necessary assistance. In small cities slight help is required, but in large ones a properly organized bureau of the budget, or its equivalent, is essential. This bureau may be located in the department of finance or placed directly under the control of the chief executive. Its rôle in budget preparation is to gather information and to work with the chief executive and department heads in formulating a satisfactory financial program.

The initial step in the budgeting process is the preparation of estimates by the administrative departments. Each department sets forth its requests for the coming year on forms furnished for the purpose by the bureau of the budget. These forms ordinarily include columns showing expenditures for the previous year and appropriations and estimated expenditures for the current year. Other columns are provided to indicate increases or decreases in the departmental requests subsequently made by the chief executive and to record the appropriation which the chief executive finally recommends to the council.

Departments also may be required to fill in work program forms indicating contemplated work units and units of cost in connection with their various activities. Revenue estimate forms of an appropriate type are filled in by the major revenue-collecting agency and by any other departments which collect revenues in the course of their operations. \*

The departmental estimates should be prepared about two or three months before the beginning of the fiscal year in order to allow adequate time for subsequent consideration by the chief executive and the council. These estimates are transmitted to the bureau of the budget which brings them together into a unified plan and scrutinizes them carefully from the standpoint of the needs of the city as a whole and in the light of anticipated revenues. With the aid of the bureau and in consultation with the department heads, the chief executive eventually discharges his responsibility of preparing a budget for submission to the council in the form of a recommendation.

Budgets should be prepared in great detail and the budget document presented to the council should provide an over-all as well as a detailed picture of contemplated expenditures and the ways and means of financing them. Summary statements of proposed expenditures, anticipated revenues, and prospective indebtedness should be supplemented by supporting schedules conveying information of a detailed type. Revenues should be classified by source. A useful classification of expenditures is by function (waste collection and disposal); by activity (the collection of garbage); by organization unit (the department of public works); by character (current operating expense, capital outlay, fixed charges, debt service); by object (personal services, contractual services, supplies, materials, equipment); and by fund (expenses chargeable to the general fund and to special funds).

In addition to information of the foregoing type, the budget document should include a message from the chief executive calling attention to the major features of his recommended financial program and portraying the general fiscal condition of the municipality. It also is a desirable practice to submit drafts of such appropriation, revenue, and borrowing ordinances as are necessary to give effect to the proposed budget.

A sound plan to pursue in preparing a budget is to anticipate the amount of revenue which the city probably will *collect* during the fiscal year and to recommend a tax rate which is sufficiently high to bring in enough revenue to meet contemplated expenditures. Probable revenue receipts can be calculated with reasonable accuracy on the basis of experiences in previous years. This type of planning is known as "cash basis" budgeting. The budget is balanced by setting off anticipated expenditures against anticipated cash receipts. Budgeting on a cash basis is a safer policy than the alternative of fixing a tax rate on the assumption that all revenues which fall due during the fiscal year actually will be paid into the treasury.

**Legalization of the Budget.** Legalization of the budget requires action by the council. In most municipalities this body is free to do as it pleases with respect to the budget submitted by the preparing authority. It may approve it without change, alter it to a limited extent or transform it almost beyond recognition. Normally, the recommended budget is adopted with comparatively minor modifications. In some municipalities the council is denied the power to add or increase items.

Council procedure in acting on the budget usually involves preliminary consideration by a committee on finance, or a special committee, or the council sitting as a committee of the whole. Public hearings are commonly held to enable citizens to present their views concerning the budget. Consultations with the chief executive, the director of finance and other administrative officials also take place. Eventually the committee which has been examining the proposed budget makes recommendations to the council and this body adopts a plan which is legalized by the enactment of suitable appropriation, revenue and borrowing ordinances.

The form in which the expenditure side of the budget is given legal effect is a matter of primary importance. It determines the degree of discretion possessed by the chief executive and other administrative authorities in making expenditures during the fiscal year.

Appropriations may be made in *lump sum* form. If this policy be pursued, the council merely fixes the total amount which each department may spend or the total for each of its major activities. No details of expenditure are incorporated in the appropriation ordinance. This plan is extremely flexible. It enables administrators to spend their allocated funds in any manner deemed desirable. They are not under legal obligation to adhere to the detailed plans which were set forth in the budget document in support of their requests. The weakness of this plan lies in the risk that funds may be spent for unapproved purposes or become exhausted through mismanagement before the end of the fiscal year unless the chief executive is in a position to exercise effective control over departmental spending. One means of providing such control is through the *allotment system* which will be explained in the next section.

Another form of appropriation is the *segregated or itemized* type. The council prescribes not only the amount per department or activity, but also the sums available for particular objects of expenditure. In cases of extreme segregation, the appropriation ordinance specifies the amount of money which may be spent for such items as stationery, telephone service, advertising, lubricants, or motor vehicle repairs. The asserted advantage of itemized appropriation is that it enables the council to exercise effective control over expenditures by the administrative branch.

Its weakness lies in its rigidity. Administrative officials are deprived of the discretion which is essential to the efficient and effective use of funds. Appropriations are made before the beginning of the fiscal year and even a competent and foresighted council is unable to anticipate all of the contingencies which may arise. Detailed specification in advance closes the door

to the economies which are achievable through effective administrative management. Council control by detailed legal regulation is a poor substitute for the direction and supervision of financial operations by a chief executive who possesses ample authority to wield control over the administrative departments.

Nevertheless, under some forms of city government, the position of the chief executive is so weak that segregated appropriations afford about the only means of imposing restraints on departmental spending. With a strong type of executive, lump sum authorizations in combination with the allotment system are far more desirable than appropriations of the itemized type.

**Execution of the Budget.** During the fiscal year city officials are engaged in the process of executing the budget, i.e., adhering to the financial program which the council has legalized. Execution is not merely a matter of abiding by the provisions of appropriation and revenue ordinances. It also involves an endeavor to spend funds as wisely and effectively as possible in order to conserve the resources of the municipality and to provide a high quality of service at a minimum cost.

Effective central controls over departmental spending are necessary. One of these is the allotment plan which was referred to in the preceding section. Under this system lump sum appropriations to the operating departments are combined with an arrangement which enables the chief executive to exercise control over departmental expenditures. The appropriation ordinance fixes the total sum which a department may spend, but expenditures may not be made until the chief executive approves departmental plans for the use of funds during successive periods of the fiscal year.

Allotments are commonly made on a quarterly or monthly basis. Each department submits a program of expenditures for each quarter or month of the fiscal year and upon approval by the executive the allotted funds become available for expenditure. The extent of the chief executive's discretion in the making of allotments is determined by law. His control over the release of funds enables him to secure conformity to the policies which he favors.

An allotment system is advantageous in that it preserves administrative discretion in spending at the same time that it subjects the departments to an over-all control which may be used to prevent expenditures in disregard of budgetary plans and to avert spending policies which are likely to result in an exhaustion of funds before the close of the fiscal year.

Another method of control is through proper budgetary accounting and a system of pre-auditing. An appropriation account is maintained for each department and a charge against this account is entered as soon as an expenditure is proposed. The first entry, which represents the estimated expense, is subsequently adjusted once the exact amount of the expenditure is determined. Thus the unencumbered balance of the account is known at all times.

The pre-auditing process begins with the *prior authorisation* of proposed

expenditures. For example, purchase orders must be submitted to the chief accounting officer (the comptroller) for approval before an obligation is incurred. Approval normally is given if the contemplated purchase is legal and if the departmental account shows an unencumbered balance. However, prior authorization also may be used as a means of preventing unwise expenditures. The pre-auditing process is completed by the final auditing of claims prior to actual payment. No claims may be paid until the comptroller has certified that commodities or services have been received, that the expenditure is legal, and that money is available for payment. Under some pre-auditing systems no provision is made for prior authorization.

Other means of budgetary control include reports and conferences. Proper *reports* provide information on the basis of which executive action may be taken. Department heads should receive reports at regular intervals to show the condition of their appropriation accounts and the chief executive should be kept fully informed at all times concerning revenue receipts, departmental expenditures, and the over-all financial condition of the city. *Conferences* between the chief executive and department heads constitute an informal method through which departmental cooperation may be secured in carrying out measures which will implement execution of the budget and bring about a more economical expenditure of public funds.

**The Independent Post-Audit.** The pre-auditing referred to above should be conducted by an officer directly or indirectly responsible to the chief executive. It is designed to aid the executive in exercising control over departmental spending in connection with the execution of the budget. Another necessary type of audit is a post-audit which occurs periodically or continuously (in large cities) after, rather than before, financial transactions have been completed. It should be performed by a fiscal agency which is independent of the chief executive and the operating departments. Its purpose is to determine precisely what happened during the fiscal year and to provide the council with information concerning the legality of transactions, the financial condition of the city, and the accuracy of the accounts kept by the administrative branch.

The most desirable arrangement for independent post-auditing is to have this function discharged either by an officer whom the council selects or by a firm of public accountants which the council hires for the purpose. Post-auditing by a state agency also is satisfactory if proper reports are made promptly to the council. In many cities the auditor is chosen by popular vote and in some by the chief executive. The latter arrangement is clearly unsatisfactory because executive appointment places the auditor under the control of the very official who directs and supervises the financial operations which are supposed to be checked.

Failure to appreciate the difference in purpose of post-auditing and pre-auditing has resulted in improper organization for the discharge of these functions in many cities. Both of them frequently are assigned to an officer who is independent of the chief executive. Under this arrangement, the

latter is deprived of control over a function (pre-auditing) which is an important aid to administrative management.

Pre-auditing should be the responsibility of a comptroller who is accountable to the chief executive. Post-auditing for the purpose of checking on the administrative branch should be undertaken by an agency independent of the executive but under the control of the council.

#### ACCOUNTING

The purposes served by an accounting system are: (1) to furnish information concerning the financial condition of the city, the transactions through which it was created, and the cost of operations; (2) to control the use of public funds and safeguard the assets of the city; (3) to prevent fraud and waste; (4) to fix responsibility for official action.

A satisfactory accounting system is essential to sound budgeting and effective administration. It produces the information which is indispensable to both the preparation and the execution of a budget and it provides the basis for such controls as are necessary to secure adherence to the city's financial program during the fiscal year. Even the most competent chief executives and department heads operating under an excellent organization are unable to conduct public business in an efficient, effective, and economical manner unless a proper system of accounting is utilized. Excellent accounts and records are as essential to the controlling authorities of a city government as a compass is to the captain of a ship.

Many cities keep accounts solely on a cash basis. A cash accounting system merely shows the amount of money which has been disbursed and the amount which has been received from the revenue resources on which the city relies. It fails to relate financial transactions to the fiscal year during which they arise. No light is cast on the obligations which are incurred but not paid and on the revenues which are due but remain uncollected. Failure to keep records on an accounts payable and accounts receivable basis is likely to lead to deficits and to precipitate serious financial difficulties. Although reported cash balances may be more than offset by unpaid commitments, the accounts which are kept do not reveal the fact.

A better type of accounting system is one which is kept on an accrual basis. Such a system discloses the true financial condition of the city at all times. Obligations are recorded as soon as they are incurred and the ledgers show unencumbered as well as unexpended balances. With respect to revenue the records indicate both the amounts payable to the city and the actual revenue receipts. Accrual accounting provides information which is essential to effective budgetary control.

Knowledge of the cash position of a municipality unquestionably is needed by administrative authorities, but information about revenues receivable and obligations incurred during the fiscal year is equally important. A good accounting system provides data of both types promptly and accurately.

Comparatively few cities keep cost accounts which relate expenses to the work that is done. Consequently, it is difficult, if not impossible, to obtain accurate reports on unit, job, and activity costs. Such information is very valuable in the preparation of budgets and in the establishment of sound budgetary control over expenditures. It is helpful in curtailing waste and inefficiency. The development and adoption of satisfactory cost accounting techniques is highly desirable in the governmental field.

One of the primary requisites of a good municipal accounting system is centralization. A central bureau of accounts and records should be established in every municipality. Centralization promotes prompt, complete, and uniform reporting and makes the exercise of financial control easier. In some cities practically all accounts are kept by the central office, but in others the degree of centralization is more limited and various accounts are maintained by some or all departments. Either arrangement may work out satisfactorily. The central bureau should possess authority to prescribe the form of accounting and to supervise such departmental accounting as is permitted. Uniformity in accounting methods is essential to the furnishing of complete information and to the effectiveness of accounting controls.

#### PURCHASING

City governments may adopt either of two basic arrangements for the purchasing of equipment, supplies, and materials. Under one plan each department does its own buying; under the other a central purchasing agency performs the buying function for the departments, subject to such minor exceptions as may prove expedient, e.g., emergency purchases and the buying of perishable goods. The superiority of centralization as a means of achieving efficiency and economy in purchasing has been demonstrated time and again. A large number of cities do their buying through a central agency.

Centralized purchasing is preferable to the decentralized system for a variety of reasons. In the first place, it promotes specialization in buying by a staff which devotes full time to this task. Experts are found in purchasing bureaus, whereas departmental buyers usually are officials who have other duties and lack the opportunity to develop the skill and experience which expert buying requires. Secondly, centralized purchasing enables the city to buy in larger quantities<sup>12</sup> and consequently to obtain more favorable prices. Substantial savings result from large-scale buying at wholesale prices. Another advantage is an improvement in the quality of commodities which are bought. This improvement is attributable to expert buying, to the preparation of adequate specifications, and to the fact that centralized buying simplifies the task of inspecting and testing deliveries to insure that vendors have conformed to specifications. Centralized purchasing also is an aid to effective accounting control over purchases and goods in storage. Centralizing the issuance of purchase orders and the

<sup>12</sup> Due to consolidation of the needs of the several departments and the standardization of commodities.

making of contracts simplifies the pre-auditing process. Moreover, the concentration of responsibility in a single office tends to eliminate waste and graft in buying.

The opponents of centralized purchasing base their case on the contention that it involves too much delay and red tape and that the departments are better judges of the kind and quality of the commodities which they need than the purchasing office. Department heads often resent the loss of freedom in purchasing which the establishment of a centralized system involves.

Although the complaint about delay and red tape may be justified under a system which is poorly conceived and managed, the truth of the matter is that more often than not the situations which cause department heads to complain are attributable to their own shortcomings as executives. They fail to anticipate their needs soon enough to allow for such delay as necessarily occurs under a properly devised central buying system.

Generally speaking, the contention that departments are better judges of their own needs and consequently should be free to buy as they please is unsupported by experience. The greater utility which is claimed for certain brands or grades of goods is usually more imaginary than real. In some cases, however, the judgment of the department probably should prevail, e.g., in the purchase of surgical instruments, and in any event the departments should be given a voice in the drawing up of specifications for such commodities as are appropriately standardized and should be consulted by the purchasing agent with respect to the quality and character of other goods which they desire. The central purchasing office should serve the departments and cooperate with them to the fullest possible extent.

Cooperative purchasing on the part of two or more units of local government affords a means of economical buying which probably will be resorted to with increasing frequency in the future. Larger-scale buying at better prices is made possible and overhead expenses may be reduced. Inter-municipal collaboration in the making of purchases is particularly desirable for small communities which are unable to afford the establishment of an expert purchasing unit and are forced to buy in small quantities because of their limited needs.

In a number of states the cooperative buying of certain commodities has been achieved through the instrumentality of the state league of municipalities. Cooperative purchasing among various local units on a voluntary basis is practiced to some extent in the Cincinnati, Milwaukee, and Los Angeles metropolitan areas. Legal obstacles, the usual reluctance to collaborate, and the newness of the idea account for the fact that joint action in buying has been undertaken in comparatively few instances.

#### FINANCIAL ORGANIZATION

The financial functions of city governments include budgeting, accounting, the assessment of property for taxation, the collection of revenues, the cus-



tody and disbursement of public funds, and the purchasing of equipment, supplies, and materials. Proper organization of these activities has an important bearing on the efficiency and effectiveness of their performance and on the ability of the chief executive to discharge his managerial responsibilities in a satisfactory manner.

A decentralized financial organization is found in a great many municipalities. Primary emphasis is placed on checks and balances as a means of preventing illegal expenditures rather than on the organizational requirements for efficient financial management. Two or more departments are created for the discharge of major financial functions and the heads of these departments frequently are chosen in such a way as to make them independent of the chief executive and the council.

Popular election of the comptroller, the treasurer, and the assessor is a fairly common practice in the cities of the United States. An arrangement of this type prevents unified and effective management of financial affairs. Cooperation among elected officials and between these officers and the chief executive affords the only hope, and a slim one at that, of coordinated action. In communities in which all financial officers are appointed by and responsible to the chief executive, the situation is greatly improved. Even so, the existence of several departments reporting directly to the chief executive hinders attainment of the best results.

Sound principles of administrative organization require that the various financial functions be concentrated in a single administrative department headed by a director appointed by the chief executive. The *Model Charter*<sup>13</sup> of the National Municipal League provides for a department of finance and places the director in charge of the preparation and execution of the budget, accounting and reporting, the assessment of property, the collection of revenues, the custody of public funds and the purchase, storage and distribution of all supplies, materials and equipment. A similar organization is recommended by T. H. Reed<sup>14</sup> who suggests the creation of a department of finance including the following divisions: assessments; treasury; budget; purchasing; and accounting and control.

Opinions differ concerning the details of satisfactory organization. For instance, some authorities favor a separate department of purchasing, especially for large cities, and others see no disadvantage in setting up a bureau of the budget outside the department of finance and directly under the control of the chief executive. Again, inclusion of the bureau of personnel in the finance department often is recommended. The desirability of particular details of organization depends to some extent on the size of a city and the scope of its financial operations.

Although many cities have created finance departments which represent a marked improvement over the heterogeneous array of independent fiscal offices so characteristic of municipal organization in the past, comparatively few have integrated financial functions to as great a degree as provided for

<sup>13</sup> Art. VI.

<sup>14</sup> *Municipal Management*, New York (The McGraw-Hill Book Co., 1941), p. 143.

under the plans summarized above. Elected comptrollers, treasurers, and assessors still are found in a large number of municipalities.

The importance of good organization cannot be over-emphasized. It greatly simplifies the management of municipal affairs and promotes efficient and effective administration by eliminating red tape, unnecessary delay, conflicts of authority, and divided responsibility.

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